

# **Environmental Assessment Addendum for the Proposed Title Transfer of ETTP Land and Facilities**



**January 2003**

**U. S. Department of Energy  
Oak Ridge Operations  
Oak Ridge, Tennessee**

**SCIENCE APPLICATIONS INTERNATIONAL CORPORATION**

contributed to the preparation of this document and should not  
be considered an eligible contractor for its review.

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Date Issued—January 2003

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## ACRONYMS

BA	Biological Assessment
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
<i>CFR</i>	<i>Code of Federal Regulations</i>
CROET	Community Reuse Organization of East Tennessee
D&D	decontamination and decommissioning
DCG	derived concentration guideline
DOE	U. S. Department of Energy
EA	Environmental Assessment
EBS	Environmental Baseline Survey
EM	Environmental Management
ETTP	East Tennessee Technology Park
FONSI	Finding of No Significant Impact
FRP	Facilities Revitalization Project
FWS	U. S. Fish and Wildlife Service
NEPA	National Environmental Policy Act of 1969
NRHP	National Register of Historic Places
OMI	Operations Management International
ORNL	Oak Ridge National Laboratory
ORO	Oak Ridge Operations
ORR	Oak Ridge Reservation
PMP	Performance Management Plan
R&D	research and development
ROD	Record of Decision
ROI	Region of Influence
SHPO	State Historic Preservation Officer
SNS	Spallation Neutron Source
TDEC	Tennessee Department of Environment and Conservation
TDOT	Tennessee Department of Transportation
T&E	threatened and endangered
THPO	Tribal Historic Preservation Office
TSCA	Toxic Substances Control Act of 1976
TVA	Tennessee Valley Authority
Y-12	Y-12 National Security Complex
VOC	volatile organic compound

# **1. INTRODUCTION**

## **1.1 PURPOSE AND NEED FOR U. S. DEPARTMENT OF ENERGY ACTION**

The purpose for U. S. Department of Energy (DOE) action is the title transfer of unneeded DOE real property located within approximately 1700 acres of the East Tennessee Technology Park (ETTP) (Fig. 1.1) in order to help support the accelerated cleanup of ETTP and to continue to support economic development in the region. DOE's action is needed to help reduce the eventual cost for building demolition and reduce or eliminate ETTP site landlord costs. This would also help to free money for reinvestment in near-term risk reduction projects. DOE also recognizes that transferring unneeded property can help offset economic losses resulting from continued DOE downsizing, facility closures, and workforce restructuring. DOE is also preparing this EA Addendum to address six additional areas of ETTP that were inadvertently not included in the 1997 EA (Fig. 1.1). These areas consist of roads, grounds, and other infrastructure that have been leased to CROET for maintenance purposes (e.g., mowing) and utility operations. Additional information on these areas is provided in Sect. 3.1 of this EA Addendum.

## **1.2 BACKGROUND**

In 1996 DOE began a Reindustrialization Program to lease vacant, underutilized, and/or inactive facilities and equipment at ETTP for use by private-sector businesses and industries. For the most part, the initial leases were executed for reuse of ETTP facilities for the same purpose as used in the recent past (e.g., office buildings leased for office space). These leases were categorically excluded from National Environmental Policy Act of 1969 (NEPA) review because they met the criteria outlined in Categorical Exclusion A7 in 10 *Code of Federal Regulations (CFR)* 1021, Appendix A to Subpart D, "Categorical Exclusions Applicable to General Agency Actions."

In 1997, DOE proposed to expand its leasing program. The purposes for the proposed expansion included: (1) accelerating environmental cleanup by leasing facilities to tenants who would clean them up at their own expense, for example, as part of the lease agreement, and (2) as a secondary benefit, populating ETTP with businesses and industries that would offer local employment opportunities to help offset DOE downsizing, facility closures, and workforce restructuring. It was proposed that, in some cases, lessees would use ETTP facilities for the same function as previously used by DOE, and some facilities might be modified or demolished and new facilities constructed to support different uses.

Subsequently, in 1997, an Environmental Assessment (EA) resulting in a Finding of No Significant Impact (FONSI) was completed for the proposed expansion of DOE's Reindustrialization Program, whereby land and facilities at ETTP would be leased for industrial and business uses (DOE 1997).

Since 1996, DOE has been leasing property at ETTP to the Community Reuse Organization of East Tennessee (CROET). CROET, including its subsidiaries, is the DOE-recognized, community reuse organization for Oak Ridge. Community reuse organizations were established and funded by DOE to implement community transition activities under Sect. 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 *U. S. Code* 7274 h). CROET, in turn, has been subleasing land parcels, facilities, and equipment to private-sector commercial firms for a range of industrial, commercial, office, research and development (R&D), manufacturing, and industrial uses.

More information about CROET and DOE's Reindustrialization Program at ETTP is available on the web at: <http://www.croet.com> and <http://www.ettpreuse.com>.

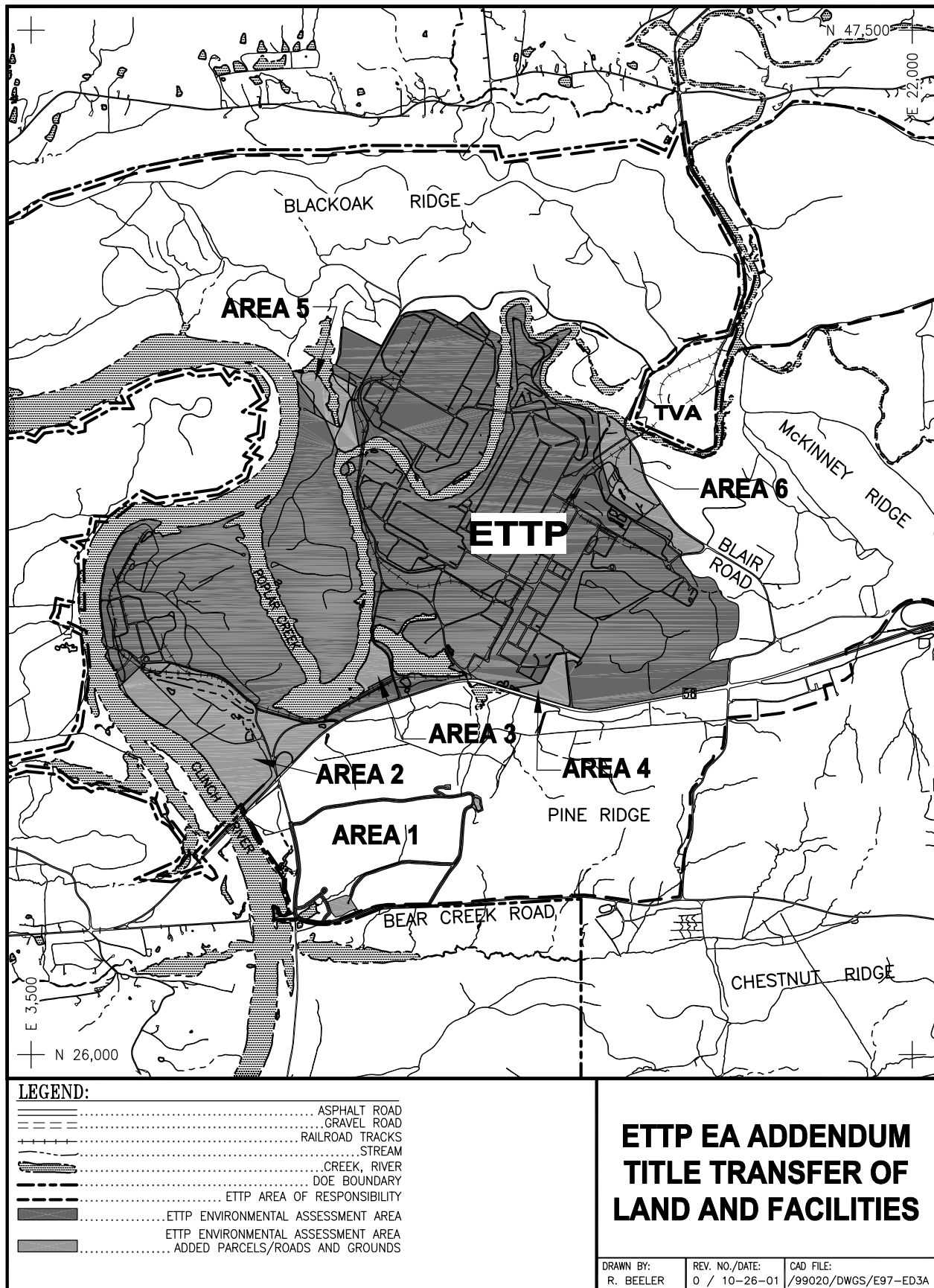


Fig. 1.1. ETP title transfer area.



DOE Oak Ridge Operations (ORO) has developed a plan to accelerate cleanup of the Oak Ridge Reservation (ORR). Implementation of the accelerated cleanup plan is described in the Oak Ridge Performance Management Plan (PMP) (DOE 2002a). A major focus of the PMP is the closure of ETTP. The PMP focuses on cleanup activities that will reduce risk to allow future use of the property as a private industrial park, reduce and ultimately eliminate mortgage costs. The plan is for these objectives to be accomplished through an aggressive and streamlined facility demolition program; a modified Reindustrialization approach focused on title transfer of some ETTP land and facilities; the removal of uranium hexafluoride cylinders; the disposition of legacy waste; and the remediation of soil and groundwater. The modified Reindustrialization approach described in the PMP is focused on certain facilities and the transfer of title of these facilities rather than to lease them.

## **2. DESCRIPTION OF TITLE TRANSFER ALTERNATIVE (NEW PROPOSED ACTION)**

DOE, in its EA prepared in 1997, analyzed two alternatives: (1) the proposed action for expansion of the leasing program at ETTP, and (2) no action. Two other alternatives, sale of ETTP land and facilities to a non-federal buyer and transfer of ETTP land and facilities to another federal agency, were dismissed from further consideration. At the time that the EA was developed, sale of the land and/or transfer to another agency would require that ETTP be declared “excess” real property, and that it be transferred from DOE to the General Services Administration for disposal. Furthermore, DOE, at the time, determined that ETTP land and facilities were essential to future opportunities that might include other adaptive reuses or potential missions.

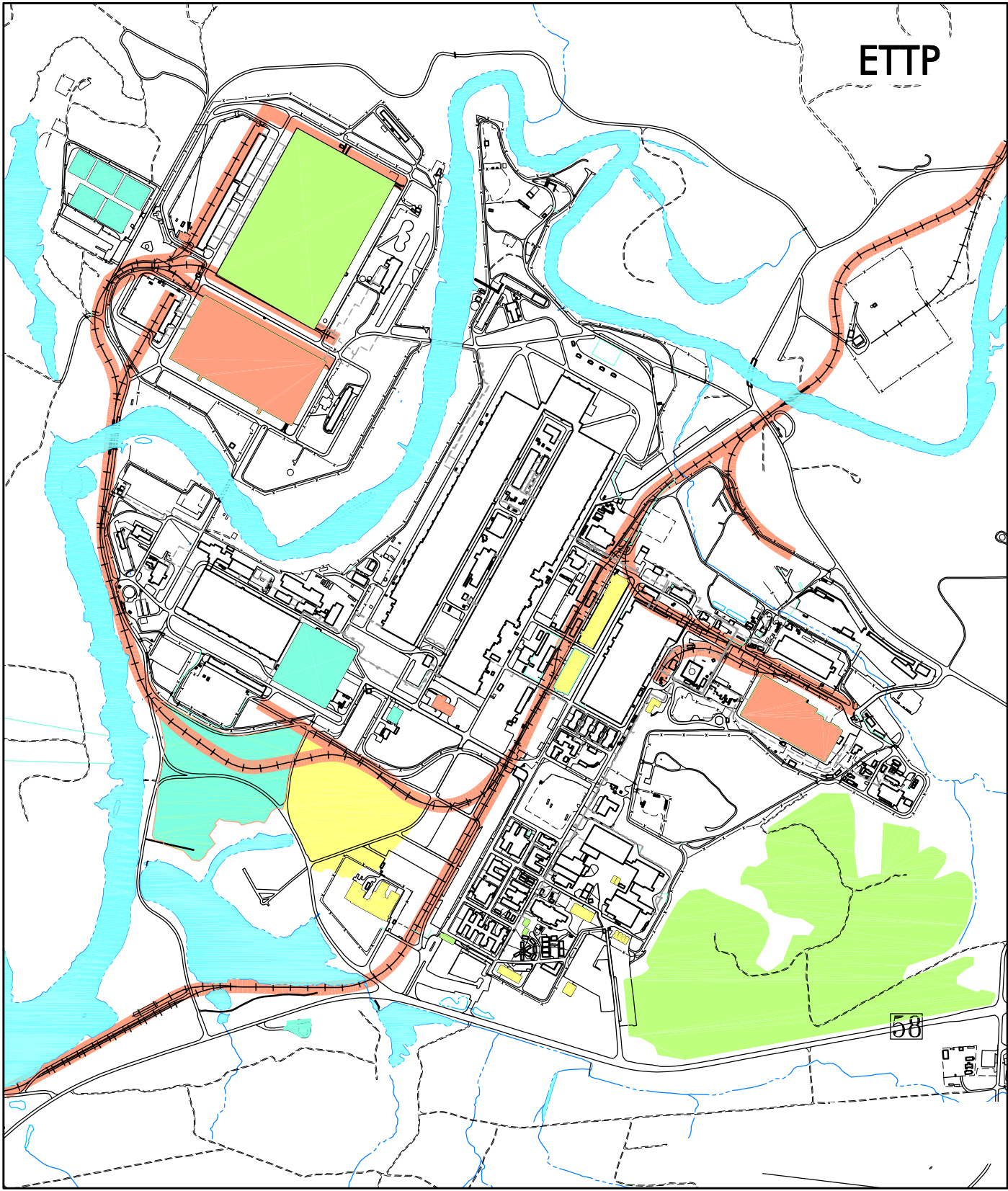
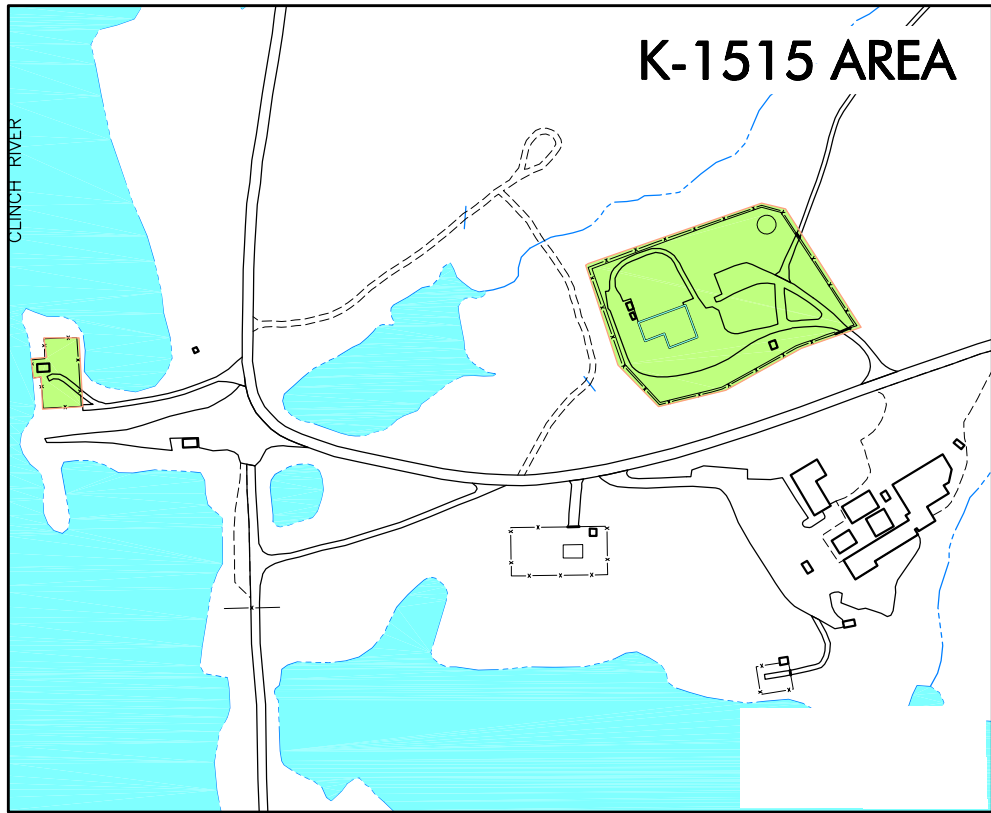
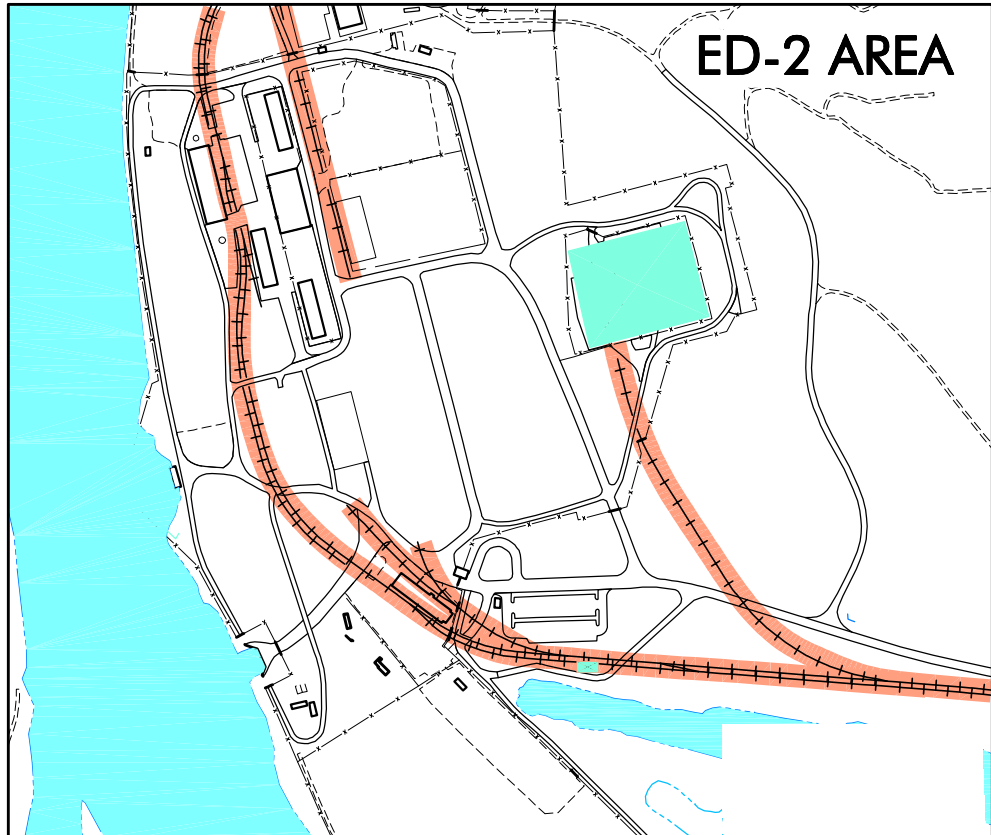
Pursuant to Executive Order 12512 and to a mandate by DOE Headquarters, the Oak Ridge Operations Office is performing utilization surveys for the ORR. The first survey being performed is for the ETTP Area of Responsibility. However, the survey does not include the property lying within the Section 229 security fenced boundaries (i.e., the Federal jurisdictional boundary). The purpose of the survey is to identify those areas of real property which are found to be (1) utilized or needed, (2) underutilized, (3) not being put to optimum use or surplus and (4) not utilized or excess. The findings are expected to be shared with the General Services Administration for concurrence in 2003.

On February 29, 2000, a DOE-issued interim final rule became effective that permits title transfer of facilities for economic development purposes. This rule is found in 10 *CFR* Part 770 and is entitled, “Transfer of Real Property at Defense Nuclear Facilities for Economic Development.” The *Federal Register (FR)* notice of this rule is provided in Appendix A. 10 *CFR* Part 770 establishes a process for disposing unneeded real property at DOE’s defense nuclear facilities for economic development purposes. With the publication of this rule, the rationale for elimination of the “sale or title transfer to a non-federal buyer” alternative is no longer valid if the buyer plans to use the property for economic development purposes.

This EA Addendum supplements the EA completed in 1997 by analyzing the proposal to transfer title of land and facilities within ETTP under a modified Reindustrialization approach consistent with the Oak Ridge PMP. This EA Addendum also addresses additional areas that were inadvertently not included in the 1997 EA. These areas as shown in Fig. 1.1 primarily consist of roads, grounds, and other infrastructure that have been leased for maintenance purposes (e.g., mowing) and the operation of utilities. These areas are described in more detail in Sect. 3.1. The land and facilities being considered for title transfer are located within an area of about 1700 acres (approximately 1400 acres considered in the 1997 EA plus about 300 acres for the additional areas).

This proposed action does not differ substantially from the proposed action described in the EA prepared for leasing land and facilities at ETTP. The major difference is that ownership of the property would be transferred. Reindustrialization efforts would focus on transferring title of up to 26 ETTP facilities and land parcels. These facilities and land parcels are listed in Table 2.1 by the year of anticipated transfer. The types of buildings to be transferred may include offices, warehouse/storage buildings, former process buildings, utilities (e.g., the water treatment facility, telephone buildings, and the railroad), site support facilities (e.g., the visitor control center and the fire hall), and miscellaneous facilities like the ETTP Visitor Overlook. ETTP land parcels include Parcel 3, Parcel 4 (Fig. 2.1), and other remediated land parcels. The transferred facilities would still be used for various industrial and business purposes. Industrial uses would be limited to those analyzed in the 1997 EA and would be required to conform to the City of Oak Ridge Zoning Ordinance (Chap. 7, Sect. 6-713 IND-2, Industrial Districts).

The PMP assumes the demolition of all ETP buildings on an established schedule. If the title to a facility is transferred prior to the scheduled deactivation date, then the facility remains in place. However, if the title is not transferred prior to the scheduled deactivation date, then the facility would be demolished. Once the title is transferred, the eventual cost for building demolition would be the responsibility of the new owner instead of DOE.



- LEGEND:**
- ..... PRIMARY BUILDING
  - ..... ASPHALT ROAD
  - ..... GRAVEL ROAD
  - ..... RAILROAD TRACKS
  - ..... FENCE LINE
  - ..... STREAM
  - ..... POND
  - ..... WETLAND
  - ..... GROUND CONTOUR (10 FT. INT.)
  - ..... GROUND CONTOUR (2 FT. INT.)
  - ..... TREE OR TREELINE

YEAR TITLE TO BE TRANSFERRED TO HERITAGE CENTER LLC.	
.....	2003
.....	2004
.....	2005
.....	2006

**TITLE TRANSFER FACILITIES MAP  
BY YEAR  
ETPP EA ADDENDUM**

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**Table 2.1. ETPP land and facilities proposed for title transfer**

<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
K-1007	K-33	K-31	K-29	Remediated land
K-1330	K-1515 group	Railroad system	K-1065 group	
K-1580	K-1039 & K-1039-1	K-1652	K-1650	
K-1225	K-1000	K-1037	K-1547	
K-1400	Parcel 4	K-791-B	K-708-E	
K-1035			K-709	
K-1036			Parcel 3-West	
Parcel 3-East			Remediated land	

ETTP = East Tennessee Technology Park.

FY = Fiscal Year.

For purposes of comparison, the no action alternative would be essentially the same as the one in the 1997 EA [i.e., continued environmental restoration, waste management, decontamination and decommissioning (D&D), and eventual closure of the site]. However, now this alternative would occur in accordance with the PMP.

DOE has determined that the EA Addendum is the appropriate supplemental documentation for the proposed action to transfer title of ETPP land and facilities for the purpose of economic development. This is because the action is primarily administrative in nature. The EA Addendum updates information that was used in the 1997 EA and forms a link between that EA and the new proposed action of title transfer. The transfer and the associated documentation would require the Secretary of Energy's approval and would lie before the appropriate congressional defense committees and the Appropriations Committee before the transfer process could be finalized.

Appropriate restrictions would be included in the Quitclaim Deed to provide for environmental protection and to ensure that activities by the new owner(s) do not adversely affect any sensitive resources (e.g., T&E species, wetlands, and cultural resources). If the new owner or any of its successors, transferees, or assigns fails to abide by the provisions of the Quitclaim Deed, then DOE would be able to seek enforcement in Federal District Court.

Also, in accordance with the Federal Facility Agreement, title transfers would comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) Section 120(h). Under Section 120(h) there are three options. In the first, under 120(h)(4), DOE can make a clean parcel determination. This is DOE-ORO's preferred approach for many of the 26 facilities targeted for title transfer. A clean parcel determination must be concurred on by EPA. The second option is to transfer title of facilities where a Record of Decision (ROD) has been signed and cleanup is complete. In this case, DOE-ORO can make an effectiveness determination under Section 120(h)(3)(A). Third, when cleanup has not been completed, title to a facility may be transferred under Section 120(h)(3)(c) "covenant deferral," allowing for cleanup to be finished after the transfer. Obtaining a covenant deferral requires the concurrence of EPA and the Governor of Tennessee. If a covenant deferral is used when transferring any of the 26 ETPP facilities or land parcels, cleanup must be completed by the time the site is closed. That is, cleanup cannot be extended beyond the schedule in the PMP.

To meet the applicable requirements set forth in CERCLA Section 120(h) an Environmental Baseline Survey (EBS) would be prepared. The EBS would include information on prior property ownership and past and present property use, as well as past and present activities on adjacent properties. Depending upon the review of historic records, environmental sampling may be conducted. Radiological surveys, consistent with the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) protocols, would also be conducted. The resultant data would be used in the EBS, as well as in a risk screen,

if appropriate. These documents provide the environmental risk management basis for DOE's title transfer decision-making, notwithstanding the policy-level decision-making that is achieved via the NEPA process.

### 3. AFFECTED ENVIRONMENT

The following sections update information found in the “Affected Environment” section of the ETTP Leasing EA prepared in 1997 (DOE 1997). For certain resources, the affected environmental information presented in the 1997 EA is still valid and has not substantially changed. For this reason, the following resources are not addressed in this section of the EA Addendum: geology and soils, climate, cultural resources, radiation and chemical exposures, and accidents.

#### 3.1 LAND USE

Major changes to the land use within ETTP have not occurred since the 1997 EA. The ETTP mission has been to remediate the site, as well as reindustrialize and reuse site assets through leasing of underutilized facilities. CROET continues to lease and sublease portions of ETTP to various businesses and industries. Including CROET, approximately 40 companies are currently leasing facilities at ETTP.

Recent Environmental Management (EM) projects at ETTP have included both remedial action and D&D activities (DOE 2002b). Remedial action projects typically address contaminant releases to the environment by addressing contaminated soil, water, sediment, or biota. D&D projects address contamination in facilities and structures and can also include demolition.

Major remedial actions that have occurred since 1997 include the following:

- K-1070-A Burial Ground (excavation of contaminated soil and waste deposited in trenches and pits),
- K-1070-C/D G-Pit and K-1071 Concrete Pad (excavation and low-temperature thermal desorption treatment of contaminated G-Pit soils and soil cover over concrete pad), and
- K-1085 Old Firehouse Burn Area Drum Burial Site (excavation of waste drums and contaminated soil)
- Major D&D projects that have occurred since 1997 include:
- Demolition of buildings (K-724, K-725, K-1001, K-1031, K-1045, K-1045-A, K-1131, K-1300, K-1301, K-1302, K-1303, K-1404, K-1407, K-1408, K-1410, and K-1413); and
- K-29, K-31, and K-33 Equipment Removal and Building Decontamination (ongoing).

Six additional areas of ETTP that were inadvertently not included in the 1997 EA are also included in this proposed action (Fig. 1.1). These areas primarily consist of roads, grounds, and other infrastructure that have been leased to CROET primarily for maintenance purposes (e.g., mowing) and utility operations. Brief descriptions of the areas follow.

**Area 1.** Approximately 56 acres of roads and grounds are associated with the K-1515 Water Treatment Plant area including Water Tank Road on Pine Ridge. The K-1515 area is located near the west end of Bear Creek Road. Water Tank Road is a loop road that runs from Bear Creek Road (near K-1515) to the water tanks on Pine Ridge and back down to South First Avenue. The grounds are located within a fenced area surrounding the K-1515 Water Treatment Plant and are mostly mowed lawn areas. This area has been leased to CROET. Operations Management International (OMI) has a contract with CROET to maintain this area and to operate the water treatment plant.

**Area 2.** A 134-acre area is located south of the old Powerhouse Area and bordered by the Clinch River, State Route 58, and the railroad along Powerhouse Road. Historically, portions of the area were used for coal storage. In addition, a material yard and the K-720 fly ash disposal area were in this location. This area is no longer used and no structures remain. The area currently contains old roads and power line right-of-ways. Habitat within the area includes a backwater area of Poplar Creek, wetlands, open areas of fields, and small areas of pines and hardwoods. Much of the area is also located within the floodplain of the Clinch River. This area is leased to CROET whose contractor OMI maintains portions of it (e.g., mowing).

**Area 3.** This is a 10-acre area is bordered by Burchfield Road, Poplar Creek, and the railroad used from 1943 to 1958 by the Southern Railway Company as a maintenance area for locomotives and a storage yard for railroad equipment and materials. All the buildings in this area have been removed and only a few concrete pads remain. Old rails, ties, and associated hardware (metal plates, rail spikes, bolts, etc.) are present in weed-covered gravel areas in the vicinity of the old rail spur. A small wooded hill covered with a mix of small hardwood trees and pines is located north of the rail yard. The Southern Appalachia Railway Museum and East Tennessee Rail Car are currently subleasing a portion of this area for railroad related activities.

**Area 4.** Approximately 14 acres of land are located along State Route 58 and bordered by the fence located along the South East Patrol Road and Boulevard Road. The area surrounds the K-1330 facility and includes mowed lawn and the K-1240 parking lot. The K-1007-P5 Pond is located in the southwest corner of the area. OMI has a contract with CROET to maintain these grounds.

**Area 5.** Approximately 23 acres of land are located south of the K-901-A Pond. The majority of the area is part of the K-901-Waste Disposal Area. The area also contains a portion of Gilliam Road and the Patrol Road to the Duct Island area. Poplar Creek bounds the area on the south and the railroad bounds the area to the east. A large power line right-of-way runs through the western portion of the area. OMI, under contract with CROET maintains much of the area through periodic mowing but some hardwoods and pines are also present.

**Area 6.** A 43-acre area of land is located on the south side of Blair Road (State Route 327). The main portion of the area is located across from the entrance to the Blair Road Quarry and adjacent to Ellis Cemetery. A small area also runs along the road south to the road leading into Portal 6. The larger portion consists of areas that are periodically mowed and of pine trees that are affected by the Southern pine beetle infestation. The smaller portion consists mainly of mowed right-of-way along Blair Road. OMI mows the area under contract to CROET.

### **3.2 AIR QUALITY**

The ORR and surrounding area continue to be classified as an attainment area for the National Ambient Air Quality Standards. The state of Tennessee has adopted these national standards, and the Tennessee Department of Environment and Conservation (TDEC) has also adopted regulations to guide the evaluation of hazardous air pollutants and toxics to specify permissible short- and long-term concentrations.

The TDEC Division of Air Pollution Control issues air permits for nonradiological airborne emissions for ETTP. ETTP has eight major air emission sources subject to Tennessee Title V Major Source Operating Permit program rules. No direct monitoring of airborne emissions is required for nonradionuclide air contaminants from permitted sources. Instead, monitoring of key process and air pollution control device parameters is done to ensure compliance with all permitted emission limits. The major sources of criteria air pollutants at ETTP include three boilers in operation at the K-1501 Steam Plant and the Toxic



Substances Control Act of 1976 (TSCA) incinerator. Actual nonradiological airborne emissions of criteria pollutants from ETTP have consistently been lower than the allowable limits (DOE 2002b).

For radiological pollutants, emissions are variable and from ETTP emanate mostly from the TSCA incinerator and two sources (D&D workshop and supercompactor) in the K-33 building. . In 2001, the emissions of radionuclides from ETTP operations were well within the allowable derived concentration guides (DCGs) published in DOE Order 5400.5, and were similar in most respects to 2000 emissions (DOE 2002b).

### **3.3 WATER RESOURCES**

Surface water monitoring is conducted at seven locations at ETTP. Two locations are upstream of ETTP, two are located downstream, and the remaining sampling locations are at points where drainage in the major surface water basins converge before discharging to Poplar Creek or to the Clinch River. At most stations, semiannual sampling and analyses for radionuclides and field readings (dissolved oxygen, temperature, and pH) are conducted. At a few stations, samples are also analyzed for volatile organic compounds (VOCs) and selected metals (DOE 2002b).

Most of the results of the monitoring for nonradiological parameters are well within the applicable standards or below detection limits. In addition, analytical results for samples collected upstream of ETTP, and are chemically similar in most respects to those collected below ETTP. Non-radiological results are compared with Tennessee water quality standards for fish and aquatic life. Radionuclide results are compared with DCGs. The sum of the fractions of the DCGs for all sampling locations remained below 4% of the DCG values for ingestion, which are the equivalent to the DOE drinking water systems criterion of 4 mrem/year (DOE 2002b).

Groundwater monitoring at ETTP is focused primarily on investigating and characterizing sites for remediation under CERCLA. The ETTP Groundwater Protection Program requirements are incorporated into the Water Resources Restoration Program. The program is responsible for conducting groundwater monitoring at ETTP, including collecting samples from exit pathway monitoring wells. Groundwater monitoring at ETTP exit point locations during Fiscal Year (FY) 2002 revealed little changes from previous monitoring results. In general, areas of known groundwater contamination continue to exhibit concentrations similar to historical results and no new releases of contamination were identified. A general trend at most of the monitoring wells sampled during FY 2002 indicates that overall concentrations of VOCs in groundwater appear to be decreasing (DOE 2002c).

### **3.4 ECOLOGICAL RESOURCES**

An updated list of animal species of concern known to be present on the ORR is presented, along with their status, in Table 3.1. Listed plant species that currently occur on the ORR are given, along with their status, in Table 3.2.

DOE, in August 2001, completed a Biological Assessment (BA) that assessed potential impacts on federally listed endangered gray and Indiana bats that could result from the D&D of the K-25 and K-27 buildings at ETTP. The BA concluded that the project was unlikely to adversely affect either species. This conclusion was based on a walkover of buildings, identification of dead bats recovered from the building interiors, and a determination that although the buildings are large, they are unlikely to provide the rather specific conditions of temperature, humidity, and structure utilized by gray or Indiana bats. The U. S. Fish and Wildlife Service (FWS) concurred with DOE's determination (FWS 2001).

**Table 3.1. Animal species of concern reported from the ORR<sup>a</sup>**

Species	Legal status <sup>b</sup>	
	Federal	State
<b><i>Fish</i></b>		
Spotfin chub ( <i>Cyprinella monacha</i> )	T	
Tennessee dace ( <i>Phoxinus tennesseensis</i> )		NM
<b><i>Amphibians and reptiles</i></b>		
Four-toed salamander ( <i>Hemidactylium scutatum</i> )		NM
<b><i>Birds</i></b>		
Sharp-shinned hawk ( <i>Accipiter striatus</i> )		NM
Anhinga ( <i>Anhinga anhinga</i> )		NM
Great egret ( <i>Casmerodius alba</i> )		NM
Northern harrier ( <i>Circus cyaneus</i> )		NM
Olive-sided flycatcher ( <i>Contopus borealis</i> )		NM
Cerulean warbler ( <i>Dendroica cerulea</i> )	C	NM
Snowy egret ( <i>Egretta thula</i> )		NM
Peregrine falcon ( <i>Falco peregrinus</i> <sup>c</sup> )		E
Bald eagle ( <i>Haliaeetus leucocephalus</i> <sup>d</sup> )	T	NM
Loggerhead shrike ( <i>Lanius ludovicianus</i> )		NM
Osprey ( <i>Pandion haliaetus</i> )		E
Yellow-bellied sapsucker ( <i>Sphyrapicus varius</i> )		NM
<b><i>Mammals</i></b>		
Gray bat ( <i>Myotis grisescens</i> )	E	E
Southeastern shrew ( <i>Sorex longirostris</i> )		NM

<sup>a</sup>Land and surface waters of the Oak Ridge Reservation (ORR) exclusive of the Clinch River, which borders the ORR.

<sup>b</sup>E = endangered, T = threatened, C = species of concern, NM = in need of management.

<sup>c</sup>The Peregrine falcon was federally delisted on August 25, 1999.

<sup>d</sup>The Bald eagle was proposed for federal delisting on July 6, 1999.

**Table 3.2. Currently known or previously reported vascular plant species reported from the ORR listed by state or federal agencies**

Species	Habitat on ORR	Legal status <sup>a</sup>	
		Federal	State
Spreading false-foxglove ( <i>Aureolaria patula</i> )	River bluff	C2	T
Heavy sedge ( <i>Carex grvida</i> )	Varied		S
Hairy sharp-scaled sedge ( <i>Carex oxylepis</i> var. <i>pubescens</i> <sup>b</sup> )	Shaded wetlands		S
Appalachian bugbane ( <i>Cimicifuga rubifolia</i> )	River slope	C2	T
Pink land's-slipper ( <i>Cypripedium acaule</i> )	Dry to rich woods		E-CE
Tall larkspur ( <i>Delphinium exaltatum</i> )	Barrens and woods	C2	E
Northern bush-honeysuckle ( <i>Diervilla lonicera</i> )	River bluff		T
Branching whitlow-grass ( <i>Draba ramosissima</i> )	Limestone cliff		S
Nuttall waterweed ( <i>Elodea nuttallii</i> )	Pond, embayment		S
Mountain witch-alder ( <i>Fothergilla major</i> )	Woods		T
Golden seal ( <i>Hydrastis canadensis</i> )	Rich woods		S, CE
Butternut ( <i>Juglans cinerea</i> )	Slope near stream	C2	T
Small-head rush ( <i>Juncus brachycephalus</i> )	Open wetland		S
Canada lily ( <i>Lilium canadense</i> )	Moist woods		T
Michigan lily ( <i>Lilium michiganense</i> <sup>c</sup> )	Moist woods		T
Fen orchid ( <i>Liparis loeselii</i> )	Forested wetland		E
Ginseng ( <i>Panax quinquefolius</i> )	Rich woods		S, CE
Tubercled rein-orchid ( <i>Platanthera flava</i> var. <i>herbiola</i> )	Forested wetland		T
Push's wild-petunia ( <i>Ruellia purshiana</i> )	Dry, open woods		S
River bulrush ( <i>Scirpus fluviatilis</i> )	Wetland		S
Shinning ladies-tresses ( <i>Spiranthes lucida</i> )	Boggy wetland		T
Northern white cedar ( <i>Thuja occidentalis</i> )	Rocky river bluffs		S
Three-parted violet ( <i>Viola tripartita</i> var. <i>tripartita</i> )	Rocky woods		S

<sup>a</sup>C2 = Special concern, under review for federal listing; was listed under the formerly used C2 candidate designation. More information needed to determine status, E = endangered, T = threatened, S = special concern, CE = status due to commercial exploitation.

<sup>b</sup>*Carex oxylepis* var. *pubescens* has not been located during recent surveys.

<sup>c</sup>*Lilium michiganense* is no longer found on the Oak Ridge Reservation (ORR).

DOE sent a notification letter to FWS on October 2, 2002, informing them of the preparation of this EA Addendum and requesting their recommendations and comments regarding the potential effects of the proposed action. FWS provided a response back to DOE on November 20, 2002, and requested that DOE provide further information on the proposed action and that they prepare a BA to assess potential impacts and determine if the action could affect the federally listed gray bat, Indiana bat, and spotfin chub. DOE has completed this BA and submitted it to the FWS. Correspondence from the FWS is included in Appendix B.

The benthic macroinvertebrate community downstream of the main storm drains in Mitchell Branch continues to show impacts when compared with the upstream reference site. However, the taxonomic richness, including the richness of the pollution sensitive taxa (Ephemeroptera, Plecoptera, and Trichoptera), has increased at all sites in Mitchell Branch and pollution abatement and remediation measures have improved the overall quality of the stream. The fish community of Mitchell Branch is also still showing impacts, but recently collected data also indicate that some recovery is taking place (DOE 2002b).

### 3.5 SOCIOECONOMICS

The Region of Influence (ROI) for the purpose of this analysis includes Anderson, Knox, Loudon, and Roane counties in Tennessee. These counties are geographically close to ETP and account for over

90% of DOE-related employment (Table 3.3). This distribution has been relatively stable for the last decade (DOE 2002d).

**Table 3.3. Distribution of DOE-related employment by employee residence in 2001**

County of residence	DOE-related employees	Percent of total (%)
Anderson	3,547	27.3
Knox	5,019	38.6
Loudon	723	5.6
Roane	2,228	17.1
All other <sup>a</sup>	1,481	11.4
Total	12,842	100.0

<sup>a</sup>Includes more than 16 other counties.

Source: U. S. Department of Energy (DOE) 2002d.

### 3.5.1 Demographic and Economic Characteristics

Table 3.4 summarizes population, per capita income, and wage and salary employment information from 1995 to 2000. The total population of the ROI was 545,188 in 2000. Knox County accounted for the largest share, with 70% of the regional population. Anderson County accounted for 13% of the regional population, Roane County for 10%, and Loudon County for the remaining 7%. Between 1995 and 2000, the regional population grew an average of less than 1% per year. Loudon County grew the most rapidly (2.0% per year), followed by Roane (0.81%) and Knox (0.72%). Population in Anderson County declined by 0.09% per year over the same period (BEA 2002).

Employment and income for the region from 1995 to 2000 are shown in Tables 3.4 and 3.5. Total employment for the region was 364,698 in 2000. Knox County accounted for 75% of that total, followed by Anderson (14%), Roane (7%), and Loudon (4%) counties. Employment for the region grew slowly from 340,422 in 1995 to 364,698 in 2000. It declined in Roane County and grew only slightly in Anderson County, following declines in 1996 and 1997. These declines coincided with major reductions in DOE-related employment during the same period. Per capita income for the region grew by roughly 4% per year, growing fastest in Knox and Loudon Counties. Total personal income grew from \$11.8 billion to \$14.9 billion over the same period (BEA 2002).

Professional and related occupations accounted for 22.0% of the impact region's employment in 2000, while management and business occupations accounted for another 12.5%. Statewide, professional and related occupations represented 17.7% of total employment, and management and business occupations represented 11.8%. Sales and office workers also represented a large fraction of employment (27.7%), as did service workers (14.5%). Professional and management occupations were even more concentrated in the City of Oak Ridge, where professional and related occupations comprised 32.6% of employment, and management and business occupations comprised 14.0% (Census 2000a).

**Table 3.4. Demographic and economic characteristics in the Oak Ridge Region of Influence**

<b>County</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Annual growth 1995–2000 (%)</b>
<i><b>Anderson</b></i>							
Population	71,597	71,797	71,736	71,321	71,454	71,269	-0.09
Per capita income (\$)	22,179	22,586	23,392	24,500	24,847	26,032	3.26
Total employment	50,088	48,315	48,109	50,139	50,563	50,984	0.36
<i><b>Roane</b></i>							
Population	49,892	50,727	51,179	51,462	51,736	51,943	0.81
Per capita income (\$)	19,166	19,160	19,379	20,116	20,895	22,000	2.80
Total employment	27,670	28,043	25,753	25,541	25,099	24,281	-2.58
<i><b>Knox</b></i>							
Population	369,171	373,621	376,767	378,319	380,010	382,723	0.72
Per capita income (\$)	23,059	23,736	24,559	26,092	26,582	28,281	4.17
Total employment	247,713	252,955	257,256	261,899	266,030	273,547	2.00
<i><b>Loudon</b></i>							
Population	35,479	36,572	37,427	38,068	38,741	39,253	2.04
Per capita income (\$)	20,540	21,108	22,227	23,301	24,385	26,241	5.02
Total employment	14,951	14,894	15,220	14,982	15,269	15,886	1.22
<i><b>Region Totals</b></i>							
Population	526,139	532,717	537,109	539,170	541,941	545,188	0.71
Per capita income (\$)	22,401	22,965	23,748	25,113	25,654	27,242	3.99
Total employment	340,422	344,207	346,338	352,561	356,961	364,698	1.39

*Source:* Bureau of Economic Analysis 2002.

### 3.5.2 Distribution of Minority and Economically Disadvantaged Populations

For the purposes of this analysis, a minority population consists of any census tract in which minority representation is greater than the national average of 30.7%. Minorities include individuals classified by the U. S. Bureau of the Census as Black or African-American, American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, and Hispanic or Latino, and those classified under “Two or more races.” This provides a conservative estimate consistent with recent Office of Management and Budget guidance (OMB 2000). Hispanics may be of any race and are excluded from the totals for individual races in order to avoid double counting.

The distribution of minority and economically disadvantaged populations changed little between 1990 and 2000. As of the 2000 census, minorities represented 40.1% of the population in tract 201. As in 1990, Black or African-American residents comprised the largest group (29.6%). The proportion of minority residents in all other Oak Ridge census tracts was below the national average, ranging from 17.4% in tract 205 to 8.8% in tract 206 (Census 2000a).

According to the 2000 Census, 12.4% of the U. S. population and 13.5% of the Tennessee population had incomes below the poverty level (Census 2000a). In this analysis, a low-income population consists of any census tract in which the proportion of individuals below the poverty level exceeds the national average. Within the ROI, 13.1% of the population in Anderson County had incomes below the poverty level in 1999. The proportion in Knox County was 12.6%, in Loudon County it was 10.0%, and in Roane County it was 13.9%. Within Oak Ridge, low-income populations were located in census tracts 201 (15.8% below poverty level) and 205 (27.9%). In other Oak Ridge census tracts, the percentages ranged from 12.1% in tract 204 to 1.9% in tract 301 (Census 2000a).

### 3.5.3 Housing

There were 244,536 housing units in the ROI in 2000, of which 224,796 (91.9%) were occupied and 19,740 (8.1%) were vacant. Of the occupied units, 69.5% were owner-occupied, and 30.5% were renter-occupied. More than half (68.7%) of the vacant units were located in Knox County, 13.5% were in Anderson County, and 11.0% were in Roane County. Loudon County accounted for only 6.8% of the vacant units. In Oak Ridge, there were 13,417 housing units in 2000, of which 12,062 (89.9%) were occupied and 1,355 (10.1%) were vacant. Of the occupied units, 68.4% were owner-occupied and 31.6% were renter-occupied (Census 2000b).

Median housing prices for owner-occupied units ranged from \$86,500 in Roane County to \$98,500 in Knox County. The price asked for vacant-for-sale units was lower in all counties, especially in Roane County, with a median asking price of \$69,900. Oak Ridge prices were similar to those in Knox County, with a median price of \$98,200 for owner-occupied units, and a median asking price of \$80,700 for vacant units (Census 2000b).

Among renter-occupied units, the median rent ranged from \$398/month in Roane County to \$493/month in Knox County, as of the 2000 Census. The median rent asked for vacant units similarly ranged from \$335/month in Roane County to \$393/month in Knox County. In Oak Ridge, these figures were \$487/month for occupied units and \$389/month for vacant units (Census 2000b).

### 3.5.4 Fiscal Characteristics

Oak Ridge City general fund revenues and expenditures for 2001 and anticipated revenues and expenditures for 2003 are presented in Table 3.5. The general fund supports the ongoing operations of local governments, as well as community services, such as police protection and parks and recreation. The largest revenue sources have traditionally been local taxes (which include taxes on property, real estate, hotel/motel receipts, and sales) and intergovernmental transfers from the federal or state government. Nearly 90% of the 2001 general fund revenue came from these combined sources. Local property taxes are expected to account for more than half (59%) of the 2003 general fund revenues (City of Oak Ridge 2002). For FY 2003, the property tax rate is \$2.94 per \$100 of assessed value. The assessment rate for industrial property was 40% (Boyer 2002). The city also receives a payment-in-lieu-of-tax for the ORR acreage that falls within the city limits. For FY 2002, the payment was based on a value of \$5,327/acre, and the farmland assessment rate of 25% (DOE 2002e).

**Table 3.5. City of Oak Ridge revenues and expenditures, FY 2000 and budgeted FY 2002 (\$)**

	2001 Actual	2003 Budgeted
<b>Revenues</b>		
Taxes	16,753,443	19,142,969
Licenses and permits	223,135	232,000
Intergovernmental revenues	9,528,710	10,098,024
Charges for services	1,377,231	1,393,421
Fines and forfeitures	339,987	381,900
Other revenues	982,396	932,500
Total revenues	29,204,902	32,180,814
<b>Expenditures and other financing</b>		
Expenditures	(13,403,979)	(14,899,297)
Other financing uses <sup>a</sup>	(17,434,335)	(19,028,729)
Total expenditures and other financing	(30,838,314)	(33,928,026)

**Source:** City of Oak Ridge 2002.

FY = Fiscal Year.

### **3.6 UTILITIES**

Since the 1997 EA was completed there have been modifications to some of the existing ETPP utilities in order to extend utility service from ETPP to the Horizon Center. A 12-inch force main sewer line was installed along State Route 58 and Oak Ridge Turnpike, which ties into the existing 15-inch line located south of ETPP. The existing overhead 13.8 kV, 3-phase, dual primary-feed electrical service was extended along State Route 58 and Oak Ridge Turnpike. The line extends approximately 2 miles along the existing transmission line right-of-way to the Horizon Center. Fiber optic telecommunications was extended from the existing ETPP cable tap. Also, work has begun on a new gas and sewer line extension project within ETPP. The proposed gas line will tie into the existing line near the intersection of Contractors Road with State Route 58. One branch of the line will follow Avenue E and provide gas to the K-1007 building and the other will follow Contractors Road and provide service to new facilities in an area northwest of K-1007 known as Parcel 3. In addition, a new force main is proposed to tie into the existing sewer system to provide service into Parcel 3.

## **4. ENVIRONMENTAL CONSEQUENCES**

Potential environmental impacts that could result from the proposed title transfer of ETTP land and facilities were evaluated for the following: land and facility use, air quality, water resources, ecological resources, cultural resources, socioeconomics, utilities, noise, and health and safety. Potential impacts identified were compared with the results of the analysis conducted in the 1997 EA. Land and facility use, threatened and endangered (T&E) species, cultural resource, socioeconomic, utility, and health and safety impacts are discussed below, either because of changes that have occurred since completing the 1997 EA, or because of potential impacts that could result from the proposed action. The other impacts have not changed. Appropriate restrictions would be included in the Quitclaim Deed to provide for environmental protection and to ensure that activities by the new owner(s) do not adversely affect any sensitive resources (e.g., T&E species, wetlands, and cultural resources).

### **4.1 LAND AND FACILITY USE**

DOE's PMP (DOE 2002a) presents a modified reindustrialization approach that is part of the accelerated closure of ETTP. The modified approach would focus only on certain target facilities. If the title is not transferred for a target facility prior to its scheduled deactivation date, then the facility would be scheduled for demolition.

The uses of title-transferred facilities would still be limited to those analyzed in the 1997 EA and would include metals recycling and fabrication; industrial services (e.g., laundry); administrative support services; laboratory services; warehousing; technology research, testing, and demonstration; waste management, including recycling, waste treatment, and waste packaging; metals smelting and machining; manufacturing (including the use of uranium enrichment technology); and general office space. These uses would be required to conform to the City of Oak Ridge Zoning Ordinance (Chap. 7, Sect. 6-713 IND-2, Industrial Districts). It is expected that the uses of certain facilities would remain unchanged upon title transfer (i.e., offices, utilities, certain roads/ parking/loading areas, and the railroad), while others may undergo modifications. New facilities are likely to be constructed on transferred land parcels.

Although the six additional areas described in Sect. 3.1 would most likely continue to be leased, it is possible that portions of Areas 1, 3, 4, and 6 could be transferred in the future. Areas located within a floodplain, or with wetlands or other sensitive resources (e.g., Area 2), or containing waste disposal areas (e.g., Area 5) would be excluded from title transfer.

The total amount of land that would actually be transferred is unknown at this time. However, for analysis purposes up to 500 acres is assumed for eventual title transfer. This amount includes the approximately 100 acres associated with the facilities listed in Table 2.1, another 100 acres for Parcels 3 and 4, and about 70 acres that include portions of Areas 3, 4, and 6. The remainder of the 500 acres would include the areas of remediated land within ETTP that have not yet been identified.

### **4.2 THREATENED AND ENDANGERED SPECIES**

No impacts to any T&E species are expected from the title transfer of ETTP land and facilities. No listed species are known to occur within the developed areas of ETTP. Because of the previously disturbed nature of the undeveloped land parcels that could potentially be transferred and their proximity to the developed industrial areas, it is also unlikely that any listed species are present.



The FWS was notified about the proposed action on October 2, 2002. FWS provided a response back to DOE on November 20, 2002, and requested that DOE provide further information on the proposed action and that they prepare a BA to assess potential impacts and determine if the action could affect the federally listed gray bat, Indiana bat, and spotfin chub. DOE has completed this BA and submitted it to the FWS. Based on the information presented in the BA, DOE concluded that the proposed title transfer is not likely to adversely affect any of the listed species. None of the species appears likely to be present within, or in, the immediate vicinity of ETTP, and proposed or designated critical habitats for the species are not present on, or near, the project area. Correspondence from the FWS is included in Appendix B. Any additional concerns or recommendations from the FWS would be considered by DOE, included as part of the final EA Addendum, and incorporated into each Quitclaim Deed as applicable.

### **4.3 CULTURAL RESOURCES**

The Tennessee State Historic Preservation Officer (SHPO) and the Eastern Band of Cherokee Indians Tribal Historic Preservation Office (THPO) have been notified about the proposed undertaking. The SHPO provided a response back to DOE on November 7, 2002 indicating that the proposed action may adversely affect properties that are eligible for listing in the National Register of Historic Places (NRHP). The SHPO also requested that DOE should also begin consultation with their office. Copies of any correspondence with these agencies will be included as part of the final EA Addendum and comments will be considered and incorporated into each Quitclaim Deed, as applicable. SHPO and THPO correspondence is included in Appendix B.

In response to the SHPO and to ensure that the potential effects of each title transfer are thoroughly considered, consultation would be conducted with the Tennessee SHPO on a proposal-by-proposal basis, as necessary, for those resources that are listed in or eligible for inclusion in the NRHP. DOE would require a determination of effect on identified NRHP-included or -eligible properties. If an adverse impact were determined, procedures would be developed and any required mitigation measures needed to address the adverse impacts, would be conducted. These activities would require approval from the SHPO and possible review by the Advisory Council on Historic Preservation.

DOE would include appropriate deed restrictions to ensure that any adverse impacts on cultural resources would be avoided to the extent practicable. The deed between DOE and the new property owner(s) would also require that if an unanticipated discovery of cultural materials (e.g., human remains, pottery, bottles, weapon projectiles, and tools) or sites is made during any development activities, all ground-disturbing activities in the vicinity of the discovery would be halted immediately. The property owner would be responsible for contacting the SHPO and the Eastern Band of Cherokee Indians THPO to initiate and complete consultation prior to any further disturbance of the discovery-site area.

### **4.4 SOCIOECONOMICS**

The socioeconomic evaluation in the EA Addendum is intended to assess the potential impacts from transferring ETTP land and facilities versus the potential impacts that were evaluated for the leasing action in the 1997 EA. For this reason, the economic effectiveness of CROET's and Heritage Center LLC's operations is not within the scope of the EA Addendum. Under the current lease, the City of Oak Ridge can only tax improvements made by CROET or its subleases. Since CROET is a not-for-profit organization, they cannot be taxed. With title transfer, facilities could be sold and the property and improvements by the new owners would be subject to property and sales taxes. This would indicate that title transfer should be more advantageous to the community (e.g., tax revenue) than the current leasing arrangement.

It was determined that the majority of the bounding socioeconomic impact analysis conducted for the 1997 EA was still valid for the current proposed action. This determination is based on the estimate of direct and indirect jobs created and the minor demographic changes that have occurred. The additional socioeconomic impacts of title transfer of ETTP land and facilities are limited to the potential revenue impacts for the City of Oak Ridge and Roane County if title transfer is to private, tax-paying corporations. The demographic, employment, and income impacts are essentially unchanged. No environmental justice impacts are expected, since the locations of minority and low-income populations remain unchanged. Little if any net in-migration is expected as a result of the proposed action. Therefore, little or no impact on demand for housing or other public services (e.g., schools, utilities, police and fire protection) is anticipated.

There are two potential changes in local revenue as a result of title transfer: (1) additional tax revenue as property becomes taxable, and (2) loss of DOE in-lieu-of-tax payments on any acreage transferred. While DOE owns the land and buildings they are not taxable, but leasehold improvements made by tenants are taxable (Young 2002). Therefore, only the land itself and any buildings transferred with the land represent a potential new source of revenue. Moreover, only land eventually sold to private corporations is likely to become taxable; transfer to CROET is unlikely to change the property's tax status (Young 2002). As a result, the net change in revenue to the city would be the tax collected on land and improvements sold to for-profit organizations, minus any lost revenues from discontinued payments-in-lieu-of-tax.

The total amount of land that CROET would be able to sell is unknown at this time. Nationwide experience with brownfield sites suggests that even after remediation, these sites are more difficult to market and develop than comparable sites with no history of contamination (United States Conference of Mayors 2000). The Conference of Mayors defines a brownfield site as one in which redevelopment is complicated by either real or perceived environmental contamination. The amount of land sold would depend on the final size of the parcels transferred, the proportion of the land considered developable after remediation, and on other market factors.

For the purposes of this analysis, it is assumed that about 30% of the 1700 acres (i.e., 500 acres) considered in this EA Addendum would eventually be suitable for development and would be transferred to CROET. The analysis assumes that DOE will retain the remaining acreage because of various constraints on development (e.g., wetlands and floodplains, land with greater than 15% slope, residual contamination, etc.). If CROET retains ownership of all of the land and existing buildings, then there would be no change in the tax status, and the net result of the transfer is the loss of the payment in-lieu-of tax. For 500 acres, this would amount to roughly \$17,646 in 2002 (500 acres valued at \$5,327/acre  $\times$  25% assessment rate  $\times$  2.65 per \$100 assessed value) (Heiskell 2002).

The city would collect maximum tax revenue if CROET sells all of the land to tax-paying corporations. Unimproved Oak Ridge industrial land has been valued from \$17,000 to \$35,000 per acre (FLUOR 2001). The total land value for 500 acres would fall between \$8.5 million and \$17.5 million, and the assessed value between \$3.4 million and \$7.0 million. At \$2.94 per \$100 assessed value (Daniels 2002) that would result in roughly \$100,000 to \$206,000 in tax revenue. Subtracting the \$30,000 in lost revenue from discontinued DOE in-lieu-of-tax payments suggests that net new revenue could range from \$70,000 to \$176,000 (\$100,000 minus \$30,000 to \$206,000 minus \$30,000). Actual revenues are likely to fall somewhere between these two possibilities and would depend on the actual acreage sold and on future land valuations, assessments, and tax rates.

## **4.5 UTILITIES**

It is anticipated that the existing ETTP Water Treatment Plant (K-1515) would be transferred and continue to provide service to the remaining facilities. Transferred facilities would also tie into other existing and new utility infrastructure (i.e., electrical, gas, communications, sewer). Some new utility infrastructure construction is expected in order to provide utility service to new facilities that may be built. Other upgrades and modifications may also be needed. Installation of utility improvements consistent with ETTP plans and coordinated (as applicable) with the city, utilities, etc., would also be expected to occur.

## **4.6 HEALTH AND SAFETY**

Health and safety impacts under the proposed action are expected to be similar to those addressed in the 1997 EA. It is expected that commercial businesses and industries would have occupational hazards, emissions, and effluents common to other industrial sites. These businesses and industries would be required to follow appropriate environmental regulations and obtain applicable permits that are intended to protect human health and the environment.

Construction workers would be subject to typical hazards and occupational exposures faced at other industrial construction sites. Falls, spills, vehicle accidents, confined-space incidents, and injuries from tool and machinery operation could occur. Similar hazards also would be present during industrial operations. Workers would be expected to receive applicable training, be protected through appropriate controls and oversight, and follow standard industrial and protective engineering practices, including the use of personal protective clothing and equipment, as specified in applicable Occupational Safety and Health Act of 1970 regulations (e.g., 29 *CFR* 1910 and 29 *CFR* 1926).

For industries that could handle radioactive material (e.g., radioactive waste treatment and metals decontamination/recycling), no unique radiological emissions would be anticipated. The Nuclear Regulatory Commission and/or TDEC Division of Radiological Health would regulate and inspect these facilities for compliance with the terms and conditions of their radioactive materials licenses.

## 5. CUMULATIVE IMPACTS

Cumulative impacts are those that may result from the incremental impacts of an action considered additively with the impacts of other past, present, and reasonably foreseeable future actions. Cumulative impacts are considered, regardless of the agency or person undertaking the other actions (40 *CFR* 1508.7), and can result from the combined or synergistic effects of individual minor actions over a period of time.

### 5.1 POTENTIALLY CUMULATIVE ACTIONS

This section describes present actions, as well as reasonably foreseeable future actions, that are considered pertinent to the analysis of cumulative impacts for the proposed action. The information presented includes new actions that were not considered in 1997 EA, or it updates information included in the 1997 EA. The actions are as follows.

**Parcel ED-1.** DOE is evaluating title transfer of Parcel ED-1 (also known as the Horizon Center) to Horizon Center LLC, a subsidiary of CROET, for the continued development as an industrial/business park for R&D, medical technology, manufacturing, distribution, and corporate headquarters office facilities. Under the proposed action, DOE would transfer title to the developable portion of the property (approximately 426 acres) to Horizon Center LLC. DOE would maintain ownership of the remainder of the parcel, which includes the Natural Area (approximately 531 acres). Horizon Center LLC, under a lease agreement with DOE, will lease the Natural Area, and continue to be responsible for meeting the requirements of the Mitigation Action Plan.

**Parcel ED-3.** DOE is also considering the transfer of a parcel of land designated as Parcel ED-3 for economic development purposes. Consistent with the PMP and E.O. 12512, DOE may consider disposal (i.e., title transfer) of this parcel. Parcel ED-3 is located along portions of State Route 327 (Blair Road) and State Route 58 (Oak Ridge Turnpike). If transferred, the property would be marketed for commercial and light industrial uses. The environmental consequences of the proposed transfer of this property were reviewed in a Draft EA (DOE 2000) issued to the public on September 27, 2000. DOE is evaluating a revised footprint that is consistent with one of the alternatives evaluated as a part of the ORR Land Use Planning Process (ORNL 2002).

**Roane Regional Business and Technology Park.** This industrial park is located north of Interstate 40 between Buttermilk Road and the Clinch River in Roane County. The 655-acre site will include areas for industrial development and greenbelt uses. The park will be developed in three phases. Phase I development of 200 acres was completed in late 2001 and is expected to house industries that will provide about 500 jobs. Examples of the types of industries expected to locate at the site include information technology, instrumentation, automotive transportation, light metalwork, materials handling, and corporate administrative offices (Human 2000).

**Pine Ridge Development.** In 1969 the City of Oak Ridge acquired 230 acres of property, identified as Site X, from the then Atomic Energy Commission. The property included the current Valley Industrial Park and a portion of Pine Ridge. In 1999 the City transferred approximately 71 acres of Pine Ridge between South Illinois Avenue, Union Valley Road, and Scarboro Road to the Industrial Development Board who in turn sold the property to a private developer. The area is now being developed for office space, light manufacturing, and storage facilities. The ridge top, which has been clear-cut, is being leveled as much as 60 to 70 ft. The dirt will be used to fill a valley between the ridges and to grade the slopes, creating a plateau for the construction of up to 12 buildings with parking. Once completed, the developer

expects between five and 15 tenants. The developer has also stated that he is working with both the University of Tennessee Agricultural Department and Greenways Oak Ridge on plans to revegetate and landscape the development.

**Rarity Ridge Development.** A private development company has proposed a mixed, residential/commercial development project for the former Boeing property in western Oak Ridge (Roane County). The developer has purchased about 1200 acres from the previous property owner and an additional 182 acres of adjoining floodplain from DOE. DOE completed an EA for the transfer of the floodplain (DOE/EA-1361) and issued a FONSI on January 31, 2001. In February 2000, the Oak Ridge City Council voted to rezone the property from industrial to mixed-use. The Rarity Ridge master plan calls for 1734 single-family homes, 133 townhouses, 2106 multi-family dwelling units, and 1,257,900 ft<sup>2</sup> of commercial space. Over 100 acres are planned for parks, 17 acres for active recreation, and over 30 acres will be retained as a preserve with limited access. In addition, approximately 440 acres will be transferred to a third party for open space and recreational purposes. Property sales are currently in progress.

**ORR Conservation Easement.** DOE and the state of Tennessee have signed an “agreement in principle” that would create a conservation easement for approximately 3000 acres of ORR land located west of Wisconsin Avenue along Blackoak Ridge. The designation is a partial payment by DOE for natural resource damages at the Lower Watts Bar reservoir. Once finalized, the easement will allow DOE to retain ownership of the land but DOE will provide funding to the state for the management of the property.

**West End Utility Expansion.** Partners-for-Progress, a group of public and private organizations, is working to extend the utility infrastructure to make industrial sites in western Oak Ridge more attractive to prospective industries. Proposed projects include the following:

- provide water and wastewater to Horizon Center;
- construct a new electrical substation;
- construct a wastewater pump station and force-main, plus provide electric service to Heritage Center;
- provide utilities to the Rarity Ridge and Heritage Center sites; and
- provide utilities to the Oak Ridge Industrial Center.

The total cost for all projects is estimated to be \$15.2 million. DOE-ORO has offered to transfer a 24-in. water line to the city and to fund water and sewer lines through CROET. The city has already begun construction on a new wastewater pumping station, a new water line, and a new force main to serve west-end development. The city is also upgrading the capacity of its sewage treatment plant.

**Oak Ridge Industrial Center.** The Oak Ridge Industrial Center is located at the site partially developed by the Tennessee Valley Authority (TVA) for the Clinch River Breeder Reactor prior to 1983. The 1245-acre property is for sale by TVA and has been considered for development by several manufacturing industries. TVA has graded a 150-acre tract on the property to < 2% slope. The remaining land is rolling to rough terrain, having an 8 to 20% slope (ORCC 1999). The developable land contains tracts with hardwood forests and pine plantations impacted by the Southern pine beetle. The site also contains cultural resources. TVA has also designated a 103-acre tract bordering Grassy Creek as the Grassy Creek Habitat Protection Area to be reserved for protection of bugbane (*Cimicifuga rubifolia*) habitat (TVA 1988). A feeder road may be constructed by the Tennessee Department of Transportation (TDOT) to improve access from State Route 58, pending the sale and further industrial development of the property (ORCC 1999).

**State Route 58/95 Expansion.** TDOT is widening a 5.2-mile section of State Route 58 to four lanes from the intersection with Interstate 40 to 0.5 miles south of the intersection with State Route 95

(TDOT 1999). Construction plans also include adding a small cloverleaf intersection where Blair Road meets State Route 58 about 0.6 miles west of State Route 95. There is another project under consideration by TDOT to widen an additional 2.8 miles of State Route 95 east to Westover Drive in Oak Ridge. Right-of-way plans have been developed for this project but construction funding has not yet been approved.

**Spallation Neutron Source Project.** The Spallation Neutron Source (SNS) will be a state-of-the-art, high-flux, short-pulsed neutron source facility occupying about 110 acres near Oak Ridge National Laboratory (ORNL). The SNS will be located within the ORR on Chestnut Ridge. About 15 permanent buildings covering about 6 acres will be constructed for the project. The SNS facility will generate sub-atomic particles called neutrons for materials testing and other research. Employment to support the design and construction phases will peak in years 2001 and 2002. Operational employment would begin in 2006 and is estimated to continue for 40 years (DOE 1999). As of October 2002, construction of the SNS has passed the halfway point and should peak in late 2002. Some components have been installed, such as the Front End System, and other key facilities, including the Linac and the Storage Ring, are close to being completed.

**Y-12 Modernization Program.** DOE has issued a Final Site-Wide Environmental Impact Statement and ROD (DOE 2001a) for the operation of the Y-12 National Security Complex (Y-12) and modernization of facilities. Major actions include construction of an Enriched Uranium Manufacturing Facility, an Assembly/Disassembly/Quality Evaluation Facility, a Depleted Uranium Operations Facility, a Lithium Operations Complex, and other facilities, as needed, to meet Y-12 mission requirements. Planning and design of these modernized facilities are in the very early stages and, thus, no detailed quantitative impacts have been assessed. However, modernized facilities would reduce radiation exposure to workers, incorporate pollution prevention/waste minimization measures in their operation, and reduce emissions to the environment compared to the facilities that are currently operating. Demolition of some facilities is underway in order to prepare for the new construction that is scheduled to begin in 2003.

**Oak Ridge National Laboratory Revitalization Project.** DOE is implementing a Facilities Revitalization Project (FRP) at ORNL in order to modernize some ORNL facilities, maintain ORNL's competitive R&D capabilities, enhance worker health and safety, and reduce operating costs. The FRP includes constructing new facilities on brownfield land and remodeling numerous existing facilities in order to relocate ORNL staff currently housed at Y-12, other ORR facilities, and in commercial office space. Up to six buildings will potentially be demolished. Approximately 1.8-million ft<sup>2</sup> of space in aging buildings, mostly at Y-12, is being vacated.

Conceptual plans for the FRP include construction of up to 24 new facilities totaling approximately 1.2-million ft<sup>2</sup> in Bethel Valley near the main ORNL entrance, near the West Portal in Melton Valley, and within the footprint for the SNS. Some of the new construction is being funded by the state of Tennessee and the private sector. About 50 acres of brownfield property in Melton Valley have been transferred from DOE to the private sector in support of this proposed action. The environmental consequences of this project were reviewed in an EA, and a FONSI was signed on June 1, 2001 (DOE 2001b). Construction began in August 2002 on the Joint Institute for Computational Sciences, Research Office Complex, Engineering Technology Facility, and the new facility for the Mouse Genetics and Genomics Program. These facilities should be completed by September 2003.

## 5.2 CUMULATIVE IMPACTS BY RESOURCE AREA

Cumulative impacts are discussed below for land use, socioeconomic, and transportation. Impacts primarily result from the actions presented in Sect. 5.1. The magnitude of the impacts depends on the timing of the actions (i.e., greater potential for impacts if several activities are ongoing at the same time).

Several of the actions in Sect. 5.1 are unlikely to impact the proposed title transfer of ETTP land and facilities (e.g., SNS, Y-12 Modernization, and ORNL) while others (e.g., continued development of Parcel ED-1, proposed development of Parcel ED-3, west end utility expansion, and State Route 95 expansion) have a greater potential to impact or be impacted by the proposed action. Because ETTP facilities are currently being leased for commercial and industrial development, the proposed transfer of title would not have a large incremental impact on the environment (including air quality, water quality, cultural resources, and biodiversity) when added to the other past, present, and reasonably foreseeable future actions discussed in Sect. 5.1.

### **5.2.1 Land Use**

Of the original 58,575 acres of land purchased in 1942 by the federal government, 24,340 acres have been conveyed and 34,235 acres remain within the ORR. The purposes for which ORR land has been conveyed include: 16,855 acres for residential, commercial, and community development; 1031 acres to federal agencies and for transportation easements; 3208 acres for preservation and recreation; 3239 acres for industrial development; and 7 acres for mission-related purposes. Current land outgrants (lease/license/permit areas) include 3498 acres for preservation/recreation and 485 acres for industrial development. The title transfer of a portion of Parcel ED-1 would remove an additional  $\pm 426$  acres of land from the ORR. Title transfer of land and facilities at ETTP could potentially remove, approximately, an additional 500 acres of land (see Section 4.1). Because the total area is small compared to the remaining ORR land ( $< 1\%$ ), the change in land use would result in negligible cumulative land use impacts. In addition, the majority of the ETTP area being considered for title transfer has already been developed for industrial purposes.

### **5.2.2 Socioeconomics**

Nearby developments may also increase employment in the ROI. Major initiatives include development of the nearby Horizon Center LLC, the SNS project at ORNL, the Roane Regional Business and Technology Park, the proposed Rarity Ridge residential/commercial development, and potential development of the Oak Ridge Industrial Center.

There is not sufficient information available to project employment associated with the Rarity Ridge development and the Oak Ridge Industrial Center. A recent analysis developed for land use planning estimated that if ETTP redevelopment and other initiatives succeed during the next 20 years, the cumulative impact could result in up to 25,000 direct and indirect new jobs, or an increase of 8.6% over 1998 ROI employment (ORNL 2002). This rate is about 0.4% per year. Given the uncertainties surrounding future success of any of these initiatives, this represents an upper bound on the cumulative employment impacts.

### **5.2.3 Transportation**

Cumulative transportation impacts in Roane and Anderson Counties could occur from increased development and growth. These potential impacts could be combined with ongoing and planned activities on the ORR and with the planned expansion of the state highway by TDOT. The main transportation impacts of commercial and industrial development would be an increase in average daily traffic volumes.

Associated with increases in traffic is the potential for an increased number of accidents, additional noise and air pollution, and accelerated road deterioration and damage. The increase in average daily traffic volumes could result in inconveniences for other vehicles (personal and commercial) on affected routes and connecting roads. Increased pavement deterioration and damage could increase costs associated with maintaining or resurfacing roads and highways. Although noise associated with increases in traffic is normally not harmful to hearing, increased traffic noise is considered by the public to be a

nuisance. Increased accidents put an additional strain on local emergency response personnel. Increased vehicular traffic also has the greatest potential to increase air pollution in the local area because emissions from motor vehicles are poorly regulated.

The title transfer of ETPP land and facilities is not expected to create any additional transportation impacts. This is because many of the ETPP facilities are already leased. In addition, widening State Route 95/58 from the west end of Oak Ridge to the intersection with Interstate 40 should help to reduce local traffic flow.



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**APPENDIX A**

**FEDERAL REGISTER NOTICE OF RULE**

**§ 299.1 Prescribed forms.**

Form No.	Edition date	Title
I-129W	12-22-99	H-1B Data Collection and Filing Fee Exemption.

7. Section 299.5 is amended in the table by revising the entry for Form "129W" to read as follows:

**§ 299.5 Display of control numbers.**

INS form No.	INS form title	Currently assigned OMB Control No.
I-129W	H-1B Data Collection and Filing Exemption	1115-0225

Dated: February 24, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

(FR Doc. 00-4766 Filed 2-28-00; 8:45 am)

BILLING CODE 4410-10-M

**DEPARTMENT OF ENERGY**

[Docket No. FM-RM-99-RPROP]

**10 CFR PART 770**

RIN 1901-AA82

**Transfer of Real Property at Defense Nuclear Facilities for Economic Development**

**AGENCY:** Department of Energy.

**ACTION:** Interim final rule and opportunity for public comment.

**SUMMARY:** The Department of Energy (DOE) is establishing a process for disposing of unneeded real property at DOE's defense nuclear facilities for economic development. Section 3158 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, directs DOE to prescribe regulations which describe procedures for the transfer by sale or lease of real property at such defense nuclear facilities. Transfers of real property under these regulations are intended to offset negative impacts on communities caused by unemployment from related DOE downsizing, facility closeouts and work force restructuring at these

facilities. Section 3158 also provides discretionary authority to the Secretary to indemnify transferees of real property at DOE defense nuclear facilities. This regulation sets forth the indemnification procedures.

**EFFECTIVE DATE:** This rule is effective February 29, 2000. Comments on the interim final rule should be submitted by April 14, 2000. Those comments received after this date will be considered to the extent practicable.

**ADDRESSES:** Send comments (3 copies) to James M. Cayce, U.S. Department of Energy, Office of Management and Administration, MA-53, 1000 Independence Avenue, SW, Washington, D.C. 20585. The comments will be included in Docket No. FM-RM-99-PROP and they may be examined between 9:00 a.m. and 4:00 p.m. at the U.S. Department of Energy Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-6020.

**FOR FURTHER INFORMATION CONTACT:** James M. Cayce, U.S. Department of Energy, MA-53, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-0072.

**SUPPLEMENTARY INFORMATION:****I. Background**

DOE's real property consists of about 2.4 million acres and over 21,000 buildings, trailers, and other structures and facilities. In the eight years since the end of the Cold War, DOE has been engaged in a two-part process in which DOE reexamines its mission need for real property holdings, and then works to clean up the land and facilities that have been contaminated with hazardous chemicals and nuclear materials. The end result will be the availability, over time and to widely varying degree at DOE sites, of real property for transfer. DOE may sell or lease real property under a number of statutory authorities. The primary authorities are section 161g of the Atomic Energy Act (42 U.S.C. 2201(g)) and sections 646(c)-(f) (also known as the "Hall Amendment") and 649 of the Department of Energy Organization Act, as amended (42 U.S.C. 7256(c)-(f) and 7259). Section 161g of the Atomic Energy Act broadly authorizes DOE to transfer real property by sale or lease to another party. Section 649 applies to leasing of underutilized real property. Section 646(c)-(f) applies to specific facilities that are to be closed or reconfigured. In addition, DOE may declare real property as "excess, underutilized or temporarily underutilized," and dispose of such real property under provisions of the Federal

Property and Administrative Services Act, 40 U.S.C. 472 *et seq.* With the exception of sections 646(c)-(f) of the DOE Organization Act, these authorities do not deal specifically with transfer of real property for economic development.

In section 3158 of the National Defense Authorization Act for Fiscal Year 1998 ("Act"), Congress directed DOE to prescribe regulations specifically for the transfer by sale or lease of real property at DOE defense nuclear facilities for the purpose of permitting economic development (42 U.S.C. 7274q(a)(1)). Section 3158 also provides that DOE may hold harmless and indemnify a person or entity to whom real property is transferred against any claim for injury to person or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant as a result of DOE (or predecessor agency) activities at the defense nuclear facility (42 U.S.C. 7274q(b)). The indemnification provision in section 3158 is similar to provisions enacted for the Department of Defense Base Realignment and Closure program under Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102-484.

The indemnification provisions in section 3158 aid these transfers for economic development because, even at sites that have been remediated in accordance with applicable regulatory requirements, uncertainty and risk to capital may be presented by the possibility of as-yet undiscovered contamination remaining on the property. Potential buyers and lessees of real property at defense nuclear facilities have sometimes expressed a need to be indemnified as part of the transfer. Furthermore, indemnification often is requested by lending or underwriting institutions which finance the purchase, redevelopment, or future private operations on the transferred property to protect their innocent interests in the property.

Indemnification may be granted under this rule when it is deemed essential for facilitating local reuse or redevelopment as authorized under 42 U.S.C. 7274q.

This rule is not intended to affect implementation of the Joint Interim Policy that DOE and the Environmental Protection Agency (EPA) entered into on June 21, 1998, to implement the consultation provisions of the Hall Amendment (42 U.S.C. 7256(e)). The Joint Interim Policy provides specific direction for instances in which Hall Amendment authority is used by DOE to enter into leases at DOE sites which are on the EPA's National Priorities List. As

stated in the scope of the joint policy, at National Priorities List sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of a lease agreement are "consistent with safety and protection of public health and the environment."

## II. Section-by-Section Discussion

The following discussion presents information related to some of the provisions in today's interim final rule, and explains DOE's rationale for those provisions.

### 1. Section 770.2 (Coverage)

Generally, real property covered by these regulations includes land and facilities at DOE defense nuclear facilities offered for sale or lease for the purpose of permitting the economic development of the property. Leases of improvements to real property that has been withdrawn from the public domain are covered, but not the withdrawn land. If any of these improvements are removable, they can be transferred under this part.

### 2. Section 770.4 (Definitions)

DOE has included a definition of "Community Reuse Organization" (CRO) in this rule. CROs are established and funded by DOE to implement community transition activities under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h). Membership in a CRO is composed of a broad representation of persons and entities from the affected communities. The CRO coordinates local community transition planning efforts with the DOE's Federal Advisory Committees, "Site Specific Advisory Boards," and others to counter adverse impacts from DOE work force restructuring. CROs may act as agent or broker for parties interested in undertaking economic development actions, and they can assure a broad range of participation in community transition activities.

Section 3158 defines "defense nuclear facility" by cross-reference to the definition in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286(g)). These facilities are atomic energy defense facilities involved in production or utilization of special nuclear material; nuclear waste storage or disposal facilities; testing and assembly facilities; and atomic weapons research facilities, which are under the control or jurisdiction of the Secretary of Energy. DOE has identified the facilities receiving funding for atomic energy defense activities (with the exception of activities under Office of Naval Reactors) which are covered by the

definition. A list of these defense nuclear facilities is included at the end of this section-by-section discussion for the convenience of the interested public.

"Excess real property" is DOE property that, after screening at all levels of DOE, is found to be unneeded for any of the DOE's missions.

The term "underutilized real property" means an entire parcel of real property, or a portion of such property, that is used at irregular intervals or for which the mission need can be satisfied with only a portion of the property. These designations are reviewed on an annual basis by the certified real property specialist at each Field Office.

### 3. Sections 770.5 and 770.6 (Identification of Real Property for Transfer)

DOE annually conducts surveys of its real property to determine if the property is being fully utilized. In a related process, DOE annually reviews its real property to identify property that is no longer needed for DOE missions. Real property covered by this part will be initially identified by these two processes. Under this part, Field Office Managers will provide the established CRO, and other interested persons and entities with a list of the real property that may be transferred under these regulations. Field Office Managers may make this list available by mail to known entities, or other means (such as posting on DOE Internet sites), or upon request. DOE will provide existing information on listed property, including its policies under the relevant transfer authority, information on the physical condition of the property, environmental reports, safety reports, known use restrictions, leasing term limitations and other pertinent information. Section 770.6 provides that a CRO or other person or entity may request that the Field Office Manager make available specific real property for possible transfer in support of economic development.

### 4. Section 770.7 (Transfer Process)

To initiate the transfer process, the potential purchaser or lessee must prepare and provide to the Field Office Manager a proposal for the transfer of real property at a defense nuclear facility for economic development. The proposal must contain enough detail for DOE to make an informed determination that the transfer, by sale or lease, would be in the best interest of the Government. Every proposal must include the information specified in section 770.7(a)(1) relating to the scope

and economic development impact of the proposed transfer. A proposal must include: a description of the real property proposed to be transferred; the intended use and duration of use of the real property; a description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made); information supporting the economic viability of the proposed development; and the consideration offered and any financial requirements. A proposal also should explicitly state if indemnification against claims is or is not being requested, and, if requested, the specific reasons for the request and a certification that the requesting party has not caused contamination on the property. This requirement stems from section 3158(b) of the Act, which requires DOE to include in any agreement for the sale or lease of real property provisions stating whether indemnification is or is not provided (42 U.S.C. 7274q(b)).

Paragraph 770.7(b) provides that DOE will review a proposal and within 90 days notify the person or entity submitting the proposal of its decision on whether the transfer is in the best interest of the Government and DOE's intent to proceed with development of a transfer agreement. DOE may consider a variety of factors in making its decision, such as the adverse economic impacts of DOE downsizing and realignment on the region, the public policy objectives of the laws governing the downsizing of DOE's production complex, the extent of state and local investment in any proposed projects, the potential for short- and long-term job generation, the financial responsibility of the proposer, current market conditions, and potential benefits to the federal government from the transfer. Since many defense nuclear facilities have ongoing missions, particular transfers may be subject to use restrictions that are made necessary by specific security, safety, and environmental requirements of the DOE facility. If DOE does not find the transfer is in the best interest of the Government and will not pursue a transfer agreement, it will, by letter, inform the person or entity that submitted it of DOE's decision and reasons. Agreement by DOE to pursue development of a transfer agreement does not commit DOE to the project or constitute a final decision regarding the transfer of the property.

Section 3158 of the Act prohibits DOE from transferring real property for economic development until 30 days have elapsed following the date on which DOE notifies the defense

committees of Congress of the proposed transfer of real property. Therefore, if DOE determines that a proposal would be in the best interest of the Government, it then will notify the congressional defense committees of the proposed transfer. In particular instances, it is possible that this notification requirement may delay the development of the transfer agreement.

Before a proposed transfer agreement is finalized, the Field Office Manager must ensure that DOE's National Environmental Policy Act (NEPA) environmental review process is completed. Depending on the transfer authority used and the condition of the real property, other agencies may need to review or concur with the terms of the agreement. For example, for Hall Amendment leases at National Priorities List sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of a lease agreement are consistent with safety and the protection of public health and the environment. The DOE will also comply with any other applicable land transfer statutes.

DOE has established policy that requires public participation in the land and facility planning, management, and disposition decision process (under DOE O 403.1A, Life Cycle Asset Management). Generally, because the proposals are likely to be generated by or in coordination with a CRO, a separate public involvement process should not be necessary. However, there may be instances in which a specific authority requires separate or additional procedures (e.g., commitments in agreements signed with tribal, state, or local governments).

#### 5. Section 770.8 (Transfer for Less Than Fair Market Value)

The House Conference Report for the Act (105-340) noted that DOE should address in this part, when it is appropriate for DOE to transfer or lease real property below fair market value or at fair market value. DOE will generally pursue fair market value for real property transferred for economic development. DOE may, however, agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction and the real property requires considerable infrastructure improvements to make it economically viable, or if in DOE's judgment a conveyance at less than market value would further the public policy objectives of the laws governing the downsizing of defense nuclear facilities. DOE has the authority to transfer real and personal property at

less than fair market value (or without consideration) in order to help local communities recover from the effects of downsizing of defense nuclear facilities.

#### 6. Sections 770.9-770.11 (Indemnification)

DOE real property often is viewed by the public as a potential liability even if it has been cleaned to specific regulatory requirements. To improve the marketability of previously contaminated land and facilities, DOE may indemnify a person or entity to whom real property is transferred for economic development against any claim for injury to persons or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant attributable to DOE (or predecessor agencies).<sup>1</sup> DOE will enter into an indemnification agreement under this rule if a person or entity requests it, and indemnification is deemed essential for the purposes of facilitating reuse or redevelopment. A claim for injury to person or property will be indemnified only if an indemnification provision is included in the agreement for sale or lease and in subsequent deeds or leases.

This general DOE indemnification policy is subject to the conditions in section 770.9 of this part. As provided by section 3158(c)(1) of the Act (42 U.S.C. 7274q(c)(1)), a person or entity who requests indemnification under a transfer agreement must notify DOE (the Field Office Manager) in writing within two years after the claim accrues.

Section 770.9 contains several other requirements and conditions that are taken from section 3158(c)(1) of the Act. The person or entity requesting indemnification for a particular claim must furnish the Field Office Manager pertinent papers regarding the claim received by the person or entity, and any evidence or proof of the claim; and must permit access to records and personnel for purposes of defending or settling the claim.

DOE also is prohibited by section 3158(b)(3) from indemnifying a person or entity for a claim "to the extent the persons and entities \* \* \* contributed to any such release or threatened release" (42 U.S.C. 7274q(b)(3)). This

<sup>1</sup> Regardless of the existence of an indemnification agreement, DOE would be responsible for the release, or threatened release of a hazardous substance or pollutant or contaminant resulting from the activities of DOE or its predecessor agencies, if the property was not remediated to required standards. This would also apply to early transfers, by sale or lease, of contaminated real property under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9620(h)(3)(C).

limitation on DOE's ability to indemnify potentially liable parties is included in the rule in paragraph 770.9(b).

One additional statutory limitation on indemnification is that DOE may not indemnify a transferee for a claim, even if an indemnification agreement exists, if the person requesting indemnification does not allow DOE to settle or defend the claim. This limitation is in paragraph 770.9(c), and it is required by section 3158(d)(2) of the Act (42 U.S.C. 7274q(d)(2)).

Section 770.10 provides, as stipulated in the Act, that if an indemnification claim is denied by DOE, the person or entity must be informed through a notice of final denial of a claim by certified or registered mail. If the person or entity wishes to contest the denial, then that person or entity must begin legal action within six months after the date of mailing of a notice of final denial of a claim by DOE. (42 U.S.C. 7274q(c)(1)).

Section 770.11 incorporates the Act's provision that a claim "accrues" on the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located. (42 U.S.C. 7274q(c)(2)). DOE may not waive this timeliness requirement.

#### Appendix to Preamble of 10 CFR Part 770

List of Defense Nuclear Facilities: This list consists of the defense nuclear facilities noted as covered facilities in House Report 105-137, and is not meant to be inclusive.

Argonne National Laboratory  
Brookhaven National Laboratory  
Fernald Environmental Management

Project Site  
Hanford Site  
Idaho National Engineering and Environmental Laboratory  
Kansas City Plant  
K-25 Plant (East Tennessee Technology Park)  
Lawrence Livermore National Laboratory  
Los Alamos National Laboratory  
Mound Facility  
Nevada Test Site  
Oak Ridge Reservation  
Oak Ridge National Laboratory  
Paducah Gaseous Diffusion Plant  
Pantex Plant  
Pinellas Plant  
Portsmouth Gaseous Diffusion Plant  
Rocky Flats Environmental Technology Site

Sandia National Laboratory  
Savannah River Site  
Waste Isolation Pilot Project  
Y-12 Plant

### III. Public Comment

The interim final rule published today relates to public property and, therefore, is exempt from the notice and comment rulemaking requirements in the Administrative Procedure Act, 5 U.S.C. 553. Nonetheless, DOE is providing an opportunity for interested persons to submit written comments on the interim final rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. All comments received will be available for public inspection in the Department of Energy Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 9 a.m. and 4 p.m., Monday through Friday, except federal holidays. All written comments received on or before the date specified in the beginning of this rule will be considered by DOE. Comments received after that date will be considered to the extent that time allows.

Any person submitting information or data that is believed to be confidential, and exempt by law from public disclosure, should submit one complete copy of the document and two additional copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it as provided in 10 CFR 1004.11.

### IV. Procedural Requirements

#### A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

#### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Today's

interim final rule concerning the sale or lease of real property at defense nuclear facilities is not subject to the Regulatory Flexibility Act because neither the Administrative Procedure Act (5 U.S.C. 553(a)(2)), nor any other law requires DOE to propose the rule for public comment.

#### C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### D. Review Under the National Environmental Policy Act

Under the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), DOE has established guidelines for its compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This interim final rule establishes procedures for real property transfers for economic development. Because the rule is procedural, it is covered by the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required. As paragraph 770.3(b) of the rule notes, individual proposals for the transfer of property are subject to appropriate NEPA review.

#### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132, and has determined that this rule will not have a substantial direct effect on states, the established relationship between the states and the federal government or the distribution of power and responsibilities among the various levels of government.

#### F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on federal agencies the general

duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) Clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that this interim final rule meets the relevant standards of Executive Order 12988.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The interim final rule published today does not contain any federal mandate, so these requirements do not apply.

#### H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires federal agencies to issue a Family Policymaking Assessment for any

proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Congressional Notification*

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

#### **List of Subjects in Part 770**

Federal buildings and facilities, Government property, Government property management, Hazardous substances.

Issued in Washington, on January 21, 2000.

**Edward R. Simpson,**  
*Acting Director of Procurement and Assistance Management.*

For the reasons set forth in the preamble, Title 10, Chapter III, of the Code of Federal Regulations is amended by adding a new part 770 as set forth below:

#### **PART 770—TRANSFER OF REAL PROPERTY AT DEFENSE NUCLEAR FACILITIES FOR ECONOMIC DEVELOPMENT**

Sec.

- 770.1 What is the purpose of this part?
- 770.2 What real property does this part cover?
- 770.3 What general limitations apply to this part?
- 770.4 What definitions are used in this part?
- 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?
- 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?
- 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?
- 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?
- 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?
- 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?

770.11 When does a claim "accrue" for purposes of notifying the Field Office Manager under § 770.9(a) of this part?

**Authority:** 42 U.S.C. 7274q.

#### **§ 770.1 What is the purpose of this part?**

(a) This part establishes how DOE will transfer by sale or lease real property at defense nuclear facilities for economic development.

(b) This part also contains the procedures for a person or entity to request indemnification for any claim that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of DOE activities at the defense nuclear facility.

#### **§ 770.2 What real property does this part cover?**

(a) DOE may transfer DOE-owned real property by sale or lease at defense nuclear facilities, for the purpose of permitting economic development.

(b) DOE may transfer, by lease only, improvements at defense nuclear facilities on land withdrawn from the public domain, that are excess, temporarily underutilized, or underutilized, for the purpose of permitting economic development.

#### **§ 770.3 What general limitations apply to this part?**

(a) Nothing in this part affects or modifies in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(b) Individual proposals for transfers of property are subject to NEPA review as implemented by 10 CFR Part 1021.

(c) Any indemnification agreed to by the DOE is subject to the availability of funds.

#### **§ 770.4 What definitions are used in this part?**

*Community Reuse Organization or CRO* means a governmental or non-governmental organization that represents a community adversely affected by DOE work force restructuring at a defense nuclear facility and that has the authority to enter into and fulfill the obligations of a DOE financial assistance agreement.

*Claim* means a request for reimbursement of monetary damages.

*Defense Nuclear Facility* means "Department of Energy defense nuclear facility" within the meaning of section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

*DOE* means the United States Department of Energy.

*DOE Field Office* means any of DOE's officially established organizations and components located outside the

Washington, D.C., metropolitan area. (See Field Office Manager.)

*Economic Development* means the use of transferred DOE real property in a way that enhances the production, distribution, or consumption of goods and services in the surrounding region(s) and furthers the public policy objectives of the laws governing the downsizing of DOE's defense nuclear facilities.

*Excess Real Property* means any property under DOE control that the Field Office, cognizant program, or the Secretary of Energy have determined, according to applicable procedures, to be no longer needed.

*Field Office Manager* means the head of the DOE Operations Offices or Field Offices associated with the management and control of defense nuclear facilities.

*Hazardous Substance* means a substance within the definition of "hazardous substances" in subchapter I of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601(14)).

*Indemnification* means the responsibility for reimbursement of payment for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage, including business losses consistent with generally accepted accounting practices, which involve the covered real property transfers. Indemnification payments are subject to the availability of appropriated funds.

*Person or Entity* means any state, any political subdivision of a state or any individual person that acquires ownership or control of real property at a defense nuclear facility.

*Pollutant or Contaminant* means a substance identified within the definition of "pollutant or contaminant" in section 101(33) of CERCLA (42 U.S.C. 9601(33)).

*Real Property* means all interest in land, together with the improvements, structures, and fixtures located on the land (usually including prefabricated or movable structures), and associated appurtenances under the control of any federal agency.

*Release* means a "release" as defined in subchapter I of CERCLA (42 U.S.C. 9601(22)).

*Underutilized Real Property or Temporarily Underutilized Real Property* means the entire property or a portion of the real property (with or without improvements) that is used only at irregular intervals, or which is used by current DOE missions that can be satisfied with only a portion of the real property.



**§ 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?**

(a) Field Office Managers annually make available to Community Reuse Organizations and other persons and entities a list of real property at defense nuclear facilities that DOE has identified as appropriate for transfer for economic development. Field Office Managers may use any effective means of publicity to notify potentially-interested persons or entities of the availability of the list.

(b) Upon request, Field Office Managers provide to interested persons and entities relevant information about listed real property, including information about a property's physical condition, environmental, safety and health matters, and any restrictions or terms of transfer.

**§ 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?**

Any person or entity may request that specific real property be made available for transfer for economic development pursuant to procedures in § 770.7. A person or entity must submit such a request in writing to the Field Office Manager who is responsible for the real property.

**§ 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?**

(a) *Proposal.* The transfer process starts when a potential purchaser or lessee submits to the Field Office Manager a proposal for the transfer of real property that DOE has included on a list of available real property, as provided in § 770.5 of this part.

(1) A proposal must include (but is not limited to):

- (i) A description of the real property proposed to be transferred;
- (ii) The intended use and duration of use of the real property;
- (iii) A description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made);
- (iv) Information supporting the economic viability of the proposed development; and
- (v) The consideration offered and any financial requirements.

(2) The person or entity should state in the proposal whether it is or is not requesting indemnification against claims based on the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities.

(3) If a proposal for transfer does not contain a statement regarding indemnification, the Field Office Manager will notify the person or entity by letter of the potential availability of indemnification under this part, and will request that the person or entity either modify the proposal to include a request for indemnification or submit a statement that it is not seeking indemnification.

(b) *Decision to transfer real property.* Within 90 days after receipt of a proposal, DOE will notify, by letter, the person or entity that submitted the proposal of DOE's decision whether or not a transfer of the real property by sale or lease is in the best interest of the Government. If DOE determines the transfer is in the Government's best interest, then the Field Office Manager will begin development of a transfer agreement.

(c) *Congressional committee notification.* DOE may not transfer real property under this part until 30 days have elapsed after the date DOE notifies congressional defense committees of the proposed transfer. The Field Office Manager will notify congressional defense committees through the Secretary of Energy.

(d) *Transfer.* After the congressional committee notification period has elapsed, the Field Office Manager:

- (1) Finalizes negotiations of a transfer agreement, which must include a provision stating whether indemnification is or is not provided;
- (2) Ensures that any required environmental reviews have been completed; and
- (3) Executes the documents required for the transfer of property to the buyer or lessee.

**§ 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?**

DOE generally attempts to obtain fair market value for real property transferred for economic development, but DOE may agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction, and:

- (a) The real property requires considerable infrastructure improvements to make it economically viable, or
- (b) A conveyance at less than market value would, in the DOE's judgment, further the public policy objectives of the laws governing the downsizing of defense nuclear facilities.

**§ 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?**

(a) If an agreement for the transfer of real property for economic development contains an indemnification provision, the person or entity requesting indemnification for a particular claim must:

(1) Notify the Field Office Manager in writing within two years after such claim accrues under § 770.11 of this part;

(2) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with evidence or proof of the claim;

(3) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with copies of pertinent papers (e.g., legal documents) received by the person or entity;

(4) If requested by DOE, provide access to records and personnel of the person or entity for purposes of defending or settling the claim; and

(5) Provide certification that the person or entity making the claim did not contribute to any such release or threatened release.

(b) DOE will enter into an indemnification agreement if DOE determines that indemnification is essential for the purpose of facilitating reuse or redevelopment.

(c) DOE may not indemnify any person or entity for a claim if the person or entity contributed to the release or threatened release of a hazardous substance or pollutant or contaminant that is the basis of the claim.

(d) DOE may not indemnify a person or entity for a claim made under an indemnification agreement if the person or entity refuses to allow DOE to settle or defend the claim.

**§ 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?**

If DOE denies the claim, DOE must provide the person or entity with a notice of final denial of the claim by DOE by certified or registered mail. The person or entity must begin legal action within six months after the date of mailing.

**§ 770.11 When does a claim "accrue" for purposes of notifying the Field Office Manager under § 770.9(a) of this part?**

For purposes of § 770.9(a) of this part, a claim "accrues" on the date on which the person asserting the claim knew, or reasonably should have known, that the

injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located.

[FR Doc. 00-4787 Filed 2-24-00; 4:07 pm]

BILLING CODE 6450-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-262-AD; Amendment 39-11602; AD 2000-04-19]

RIN 2120-AA64

#### Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that currently requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. This amendment adds a new requirement for operators to adjust the thrust reverser handle stop, install new wiring, and modify the Digital Electronic Engine Control (DEEC) software, which terminates the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the Engine Indication Electronic Display (EIED), which could result in in-flight shutdown of engine(s).

**DATES:** Effective April 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration

(FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97-21-16, amendment 39-10202 (62 FR 60773, November 13, 1997), which is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, was published in the *Federal Register* on November 3, 1999 (64 FR 59685). The action proposed to retain the requirement to revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions, and add a new requirement for adjustment of the thrust reverser handle stop, installation of new wiring, and modification of the Digital Electronic Engine Control (DEEC) software, which would terminate the need for the AFM revision.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### Requests To Revise Applicability

One commenter, the manufacturer, suggests that the applicability be revised to exclude airplanes on which Dassault Factory Modification M2193 has been accomplished. The commenter notes that this modification is equivalent to Dassault Service Bulletin F50-276, dated June 24, 1998 (which was cited in the AD as the appropriate source of service information). The FAA concurs. The actions described in the referenced Dassault service bulletin constitute terminating action for the requirements of this AD; therefore, airplanes on which the service bulletin has been accomplished are excluded in the applicability of the AD. Since Dassault Modification M2193 is equivalent to that service bulletin, the FAA has revised the final rule to also exclude airplanes having this production modification.

The same commenter also requests that the applicability of the proposed AD be revised in regard to the listing of affected airplanes. The commenter notes that the proposed AD applies to "serial numbers 251, 253, and subsequent, equipped with Allied-Signal TFE731-40 engines \* \* \*." The commenter suggests that the applicability be expanded to include any Falcon 50 series airplane retrofitted with Dassault Service Bulletin F50-280 or Dassault Factory Modification 2518, since this service bulletin describes procedures for installation of Allied-Signal TFE731-40 engines on any Model Mystere-Falcon 50 series airplane, including serial numbers prior to 251.

The FAA does not concur. The FAA acknowledges that all airplanes equipped with the referenced engine type should also be subject to the requirements of this AD, if all actions required by this AD have not been accomplished. However, after further discussions with the manufacturer, the FAA has been advised that Dassault Service Bulletin F50-280 is in the process of review, but has not been released, nor has the equivalent Dassault Modification 2518 been approved. The FAA does not consider it appropriate to delay issuance of this final rule while awaiting such approval; therefore, no change is made to the applicability of the AD in this regard. If the engine retrofit service information is approved, the FAA will consider further rulemaking, if necessary, to apply the requirements of this AD to additional airplanes.

#### Request To Revise Number of Affected Airplanes

The same commenter states that the estimate of 7 affected airplanes is incorrect in the cost impact information of the proposed AD, since other airplanes may have the Allied-Signal TFE731-40 engines installed as a retrofit, as discussed in the previous comment. The FAA infers that the commenter is requesting that the number of affected airplanes be increased. However, since the previously described engine retrofit service information has not been approved, no airplanes on the U.S. Register should have had such a modification at this time. No change to the AD is necessary in this regard.

#### Request To Revise Cost Estimate

The same commenter states that the estimate of 2 work hours is conservative in that it does not include hours necessary to gain access, remove and replace the unit, and perform engine ground runs and/or flight tests. The

**APPENDIX B**

**CORRESPONDENCE**



## Department of Energy

Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831—  
October 2, 2002

Dr. Lee A. Barclay, Ph.D.  
Field Supervisor  
Fish and Wildlife Service  
446 Neal Street  
Cookeville, Tennessee 38501

Dear Dr. Barclay:

### **INFORMAL CONSULTATION UNDER SECTION 7 OF THE ENDANGERED SPECIES ACT FOR THE PROPOSED TITLE TRANSFER OF LAND AND FACILITIES WITHIN THE EAST TENNESSEE TECHNOLOGY PARK, OAK RIDGE TENNESSEE**

The U.S. Department of Energy (DOE) is proposing to transfer title to land and facilities within the East Tennessee Technology Park (ETTP). Previous consultation with your office on the lease of land and facilities within the ETTP resulted in your concurrence on October 28, 1996 with our finding of no adverse impact on listed species or critical habitat.

In 1997, an Environmental Assessment (EA) was prepared for the proposed expansion of DOE's Reindustrialization Program, whereby land and facilities at ETTP would be leased for industrial and business uses. This EA resulted in a Finding of No Significant Impact (FONSI). As part of the NEPA process, an addendum to the EA will be completed to evaluate the title transfer alternative. This alternative was discussed in the original EA, but was not fully evaluated. The addendum will also address additional areas that were not included in the EA. These areas primarily consist of roads, grounds, and other infrastructure that have been leased for maintenance purposes (e.g., mowing and utilities). The EA Addendum will result in a revised FONSI or a determination that an Environmental Impact Statement is needed. A public comment period and information session is planned prior to finalizing the EA Addendum. The draft addendum to the EA and the appropriate deed restrictions will be forwarded to your office as soon as they have been completed.

This letter is intended to serve as informal consultation under Section 7 of the Endangered Species Act. As such, DOE requests your recommendations and comments about the potential effects of this proposed action. Your input will be used in the preparation of the EA addendum. If you need further information, please call me at (865) 576-0938. Thank you in advance for your prompt reply.

Sincerely,

A handwritten signature in dark ink, appearing to read "James L. Elmore", is written over the typed name.

James L. Elmore, Ph.D.  
Alternate NEPA Compliance Officer

Enclosure



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

446 Neal Street  
Cookeville, TN 38501

November 20, 2002

Mr. James L. Elmore, Ph.D.  
U.S. Department of Energy  
Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

Dear Dr. Elmore:

Thank you for your letter and enclosure of October 2, 2000, regarding the preparation of an Environmental Assessment (EA) addendum for the proposed transfer of additional land and facilities within and adjacent to the East Tennessee Technology Park (ETTP) in Roane County, Tennessee. U.S. Fish and Wildlife Service (Service) personnel have reviewed the information submitted and offer the following comments for consideration.

An initial request for informal consultation pursuant to Section 7 of the Endangered Species Act was received from the Department of Energy (DOE) on October 15, 1996. The original EA covered approximately 725 acres within the security fence and 344 acres outside of the security fence near the former powerhouse site. The EA documented the proposed expansion of DOE's Reindustrialization Program, and considered the proposed lease of these areas at ETTP for industrial and business uses. A proposed land transfer was considered as an alternative in the original EA, but was not fully evaluated. The areas were described as heavily industrialized and it was stated that future uses of ETTP would be similar to past activities. In a October 28, 1996, correspondence to DOE, the U.S. Fish and Wildlife Service (Service) concurred with DOE's conclusion that protected species were unlikely to occur at ETTP, and that the potential for significant adverse impacts was low.

In an August 27, 1997, correspondence to the Service, DOE requested that an additional three parcels be considered for potential leases. Brief visual descriptions of the project areas were utilized to preclude the potential occurrence of protected species in these areas within and adjacent to the ETTP. Unspecified plant and waterfowl survey data from the Tennessee Wildlife Resources Agency (TWRA) were utilized by DOE to indicate that no protected species were present on these proposed additional parcels. These areas, encompassing approximately 348 acres, were included for consideration during the re-initiation of informal Section 7 consultation procedures. We have no

record of responding to this latter request or receiving the EA and Finding of No Significant Impact (FONSI). Our October 28, 1996, concurrence was conditional, and we recommended DOE enter into further Section 7 consultation if Federally protected species were found in the project area and the actions of the proposed lessee(s) could effect them.

The proposed additional transfer parcels are not geo-referenced or specifically identified in your October 2, 2002, correspondence. Although they are highlighted in a black and white figure attached to your letter, it is not clear what types of habitat or existing infrastructure features may be present. This type of information would enable us to provide site-specific information regarding the potential presence of protected species or significant habitat features. We would appreciate clarification on the exact location and size of all of the proposed transfer parcels, as well as specifically excluded areas which may be near these parcels. Neither the original EA or this request for continued informal Section 7 consultation specifically identifies new potential owners, or the proposed nature of industrial and business operations which would occur on the transferred parcels. Information regarding the status of existing infrastructure (e.g., stormwater retention basins, wastewater collection and treatment systems, other utilities and access roads) or facilities which may be proposed as a result of this action would also be beneficial.

According to our records, the following federally listed endangered (E) and threatened (T) species may or are known to occur within the ETTP project area:

Gray bat (E)	( <i>Myotis grisescens</i> )
Indiana bat (E)	( <i>Myotis sodalis</i> )
Spotfin chub (T)	( <i>Cyprinella monacha</i> )

Qualified biologists should assess potential impacts and determine if the proposed project may affect the species. You should submit a copy of your assessment and finding to this office for review and concurrence. A finding of "may affect" could require the initiation of formal consultation procedures.

The Oak Ridge Land Use Planning Focus Group strongly encouraged that, as soon as possible, the land use planning process be applied to the entire Oak Ridge Reservation (ORR). Although many of the parcels presented in the figure accompanying your current correspondence are in areas adjacent to, or designated by, the Focus Group under all potential land use scenarios as open space/industrial, it may be prudent to re-evaluate all of the parcels and previous decisions regarding future land uses at ETTP. We believe this is especially important due to the proximity of some of these parcels to Blackoak Ridge, an area presently under consideration for enhanced conservation measures by DOE, and the accumulation of more recent terrestrial and aquatic species occurrence data for this part of the ORR.

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at [steven\\_alexander@fws.gov](mailto:steven_alexander@fws.gov).

Sincerely,



Lee A. Barclay, Ph.D.  
Field Supervisor

xc: ~~A~~Andrea Perkins, DOE, Oak Ridge  
Nancy Carnes, DOE, Oak Ridge  
Barry Turner, TDEC, Nashville  
John Ousley, TDEC, Oak Ridge  
Dave McKinney, TWRA, Nashville  
Mark Hastings, TVA, Knoxville  
John Hefner, FWS, Atlanta  
Holly Deal, DOI-SOL, Atlanta



## Department of Energy

Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831—

September 1, 2002

Mr. Joseph Garrison  
Tennessee Historical Commission  
Department of Environment and Conservation  
2941 Lebanon Road  
Nashville, Tennessee 37243-0442

Dear Mr. Garrison,

**NATIONAL HISTORIC PRESERVATION ACT, SECTION 106 COMPLIANCE,  
NOTIFICATION LETTER OF PROPOSED UNDERTAKING – TITLE  
TRANSFER OF LAND AND FACILITIES WITHIN THE EAST TENNESSEE  
TECHNOLOGY PARK, OAK RIDGE, TENNESSEE**

As required in 36 CFR Part 800, this letter provides official notification to the Tennessee Historical Commission of the proposed Department of Energy Oak Ridge Operations (DOE ORO) undertaking for title transfer of land and facilities within the East Tennessee Technology Park (ETTP) (see enclosure).

In 1997, an Environmental Assessment (EA) was prepared for the proposed expansion of DOE's Reindustrialization Program, whereby land and facilities at ETTP would be leased for industrial and business uses. This EA resulted in a Finding of No Significant Impact (FONSI). The FONSI stated that each lease undertaking would require a DOE ORO determination of effect on identified National Register of Historic Places (NRHP)-included or -eligible properties. If an adverse impact were determined, procedures involving agreement with the State Historic Preservation Officer (SHPO) and review by the Advisory Council on Historic Preservation (ACHP) including any required mitigation measures needed to address the adverse impacts, would be conducted. To ensure that the potential effects of the individual leases are thoroughly considered, consultation has been conducted with the SHPO on a lease-by-lease basis, as necessary, for those structures that are listed in or eligible for inclusion in the NRHP. A similar process would be used for specific land and facilities for which title transfer is proposed.

Consistent with the Oak Ridge Performance Management Plan and in order to enhance economic development, title transfer is being proposed for certain land parcels and facilities within ETTP. As a measure for continued protection of historic and archaeological resources, appropriate restrictions would be incorporated into the Quitclaim deed.

DOE ORO staff has determined that the proposed action, with the appropriate deed restrictions, would not have an adverse effect on historical, archaeological, or cultural



resources included or eligible for inclusion in the NRHP. This letter also serves to formally invite the SHPO to participate in the initial planning stages of the proposed undertaking and enter into the consultation process for the proposed project.

The following Section 106 requirements pertain to the proposed action:

- *Name, title, and business address of DOE's designated "Agency Official" responsible for this planned undertaking*

Mr. Robert J. Brown, Assistant Manager for Assets Utilization  
U.S. Department of Energy, Oak Ridge Operations  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

- *Area of Potential Effect*

The facilities and land potentially available for title transfer, which covers approximately 1500 acres located within a portion of the ETTP Area of Responsibility, will be considered the area of potential effect (APE).

- *Identification of Consulting Parties*

The consulting parties recommended by DOE for this project include the following: (1) Tennessee SHPO; (2) Eastern Band of Cherokee Indians THPO; (3) City of Oak Ridge; (4) Oak Ridge Heritage and Preservation Association; (5) Oak Ridge Reservation Local Oversight Committee, and (6) Oak Ridge Site-Specific Advisory Board. The APE is within the boundaries of the Oak Ridge Reservation.

- *Public Participation*

This proposed undertaking would be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA). As part of the NEPA process, an addendum to the EA would be completed to evaluate the title transfer alternative. This alternative was discussed in the original EA, but was not fully evaluated. The addendum will also address additional areas that were not included in the EA. These areas primarily consist of roads, grounds, and other infrastructure that have been leased for maintenance purposes (e.g., mowing and utilities). The EA Addendum will result in a revised FONSI or a determination that an Environmental Impact Statement is needed. A public comment period and information session is planned prior to finalizing the EA Addendum.

- *Assignment of Section 106 Review Responsibilities*

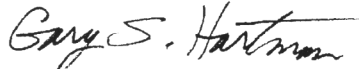
DOE is the sole agency responsible for the Section 106 review process for this proposed undertaking.

- *Incorporation of Section 106 in Environmental Documents*

As mentioned previously, this proposed undertaking would be conducted in accordance with the requirements of NEPA, and Section 106 requirements would be incorporated into the EA Addendum and revised FONSI (if appropriate) prepared for the undertaking.

DOE ORO requests your concurrence with these determinations. If you have any questions or need additional information, please telephone me at 865-576-0273.

Sincerely,



Gary S. Hartman  
DOE ORO Cultural Resources  
Management Coordinator

Enclosure

cc w/enclosure:

Skip Gosling, HR-76, HQ/FORS

James Bird, Eastern Band of Cherokee Indians

Tom McCulloch, Advisory Council on Historic Preservation

Susan Gawarecki, Oak Ridge Local Oversight Committee

Amy Fitzgerald, City of Oak Ridge

Norman Mulvenon, Oak Ridge Reservation Site-Specific Advisory Board

Lloyd Stokes, Oak Ridge Heritage and Preservation Association

Letter to Mr. Joseph Garrison from Gary S. Hartman

Dated September 1, 2002

**Subject: NATIONAL HISTORIC PRESERVATION ACT, SECTION 106  
COMPLIANCE, NOTIFICATION LETTER OF PROPOSED  
UNDERTAKING – TITLE TRANSFER OF LAND AND FACILITIES  
WITHIN THE EAST TENNESSEE TECHNOLOGY PARK, OAK  
RIDGE, TENNESSEE**

bcc w/enclosure:

David Allen, SE-30-1, ORO

Gerald Boyd, EM-90, ORO

Robert Brown, AU-60

Susan Cange, AU-61

Patricia Hart, AU-61

James Kopotic, EM-911, ORO

Donna Perez, EM-911, ORO

Walter Perry, M-4, ORO

Bob Poe, SE-30, ORO

Linda Albrecht, Bldg. K-1580, MS 7131

Mike Redmon, Bldg. K-1580, MS 7131

Gary Person, Bldg. K-601, MS 7302

Tony Poole, Bldg. K-1320, MS 7234

Mark Allen, Bldg. K-1580, MS 7131

Sheila Thornton, CDM, Bldg. K-1002, MS 7240

Jennifer Webb, Bldg. 9115, MS 8219

James Hall, Bldg. 6026, MS 6395

Mick Wiest, Bldg. 9116, MS 8098

EC Document Center, Building K-1002, MS 7240

DOE/ORO Public Reading Room, Building 1916-T2



**TENNESSEE HISTORICAL COMMISSION**  
November 7, 2002 DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
2941 LEBANON ROAD  
NASHVILLE, TN 37243-0442  
(615) 532-1550

Mr. Gary S. Hartman  
Oak Ridge Operations/DP-80  
Post Office Box 2001  
Oak Ridge, Tennessee, 37831

**RE: DOE, ETPP/LAND/FACILITIES TRANSFER, UNINCORPORATED,  
ANDERSON COUNTY**

Dear Mr. Hartman:

In response to your request, received on Monday, November 4, 2002, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process.

Considering available information, we find that the project as currently proposed **MAY ADVERSELY AFFECT PROPERTIES THAT ARE ELIGIBLE FOR LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES.** You should now begin immediate consultation with our office. Please direct questions and comments to Joe Garrison (615) 532-1550-103. We appreciate your cooperation.

Sincerely,

Herbert L. Harper  
Executive Director and  
Deputy State Historic  
Preservation Officer

HLH/jyg